

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #6

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**FILED**

APR 13 11 07 AM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

AMENDMENT TO AN EXISTING RULE: YES X, NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 15

TITLE OF RULE BEING AMENDED: West Virginia Occupational Safety and  
Health Act

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:                     

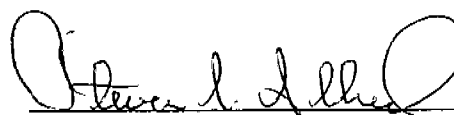
TITLE OF RULE BEING PROPOSED:   

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S. B. 320

SECTION 64-10-3, PASSED ON March 10, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: April 15, 1998



Authorized Signature

\$3.60

# WEST VIRGINIA DIVISION OF LABOR

319 Building Three, Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-3797

CECIL H. UNDERWOOD  
Governor



STEVEN A. ALLRED  
Commissioner

## **42 CSR 15** **Promulgation History**

**Jun 25, 1997 - Filed for public comment.**

**Jul 31, 1997 - Agency approved, filed with Legislative Rule Making and Review Committee.**

**Nov 18, 1997 - Rule modified by Legislative Rule Making and Review Committee.**

**Dec 1, 1997 - Filed "Proposed rule" as modified by Legislative Rule Making and Review Committee.**

**Mar 2, 1998 - Approved by Senate.**

**Mar 9, 1998 - Approved by House of Delegates.**

**Mar 10, 1998 - Senate concurred – SB320 passed.**

**Apr 13, 1998 - Final filing and adoption of Legislative rule with effective date of April 15, 1998.**

*We are an Equal Opportunity Employer*

**FILED**

**APR 13 11 07 AM '98**

**OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE**

**42CSR15  
TITLE 42  
LEGISLATIVE RULE  
DIVISION OF LABOR**

**SERIES  
WEST VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT**

**§42-15-1. General.**

1.1. Scope. This legislative rule governs the workplace safety and health of employees, adopts federal and state standards, establishes record keeping and reporting requirements, provides for inspections and investigations and the issuance of citations and penalties, establishes a complaint and appeal process and education and training, and provides for optional coverage.

1.2. Authority. W.Va. Code §21-3A-6.

1.3. Filing Date.

1.4. Effective Date.

1.5. Repeal and Replace: This rule repeals and replaces the Division of Labor rule, West Virginia Occupational Safety and Health Act, 42CSR15 that was effective April 1, 1988.

**§42-15-2. Application and Enforcement.**

2.1. Application. This legislative rule governs all public employers, public employees and public workplaces within the state of West Virginia.

2.2. Enforcement. Enforcement of this legislative rule is vested with the West Virginia Division of Labor.

**§42-15-3. Definitions.**

3.1. "Act" means the West Virginia Occupational Safety and Health Act, W.Va. Code §21-3A-1, et seq.

3.2. "Commission" means the occupational safety and health review commission as established by W.Va. Code §21-3A-10.

3.3. "Commissioner" means the commissioner of the West Virginia Division of Labor or his or her designated representative.

3.4. "Division" means the West Virginia Division of Labor.

3.5. "Employee" or "employees" includes any person suffered or permitted to work by an employer.

3.6. "Employer" means a public employer and includes the state or any department, division, bureau, board, commission, council, agency or authority of the state, but shall not include the Division of Corrections, the Division of Health and the Legislature.

3.7. "Imminent danger" means any conditions or practices in any place of employment which such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through the enforcement procedure.

3.8. "Person" means one or more individuals.

3.9. "Standard" means a standard for health or safety which requires the adoption or use of one or more practices, means, methods, operations or processes reasonably necessary or appropriate to provide safe and healthful employment in places of employment.

3.10. "Workplace" means a place where employees are assigned to work but shall not include any place inspected or regulated by the Federal Occupational Safety and Health Administration, the Federal Mine Safety and Health Administration, or facilities under the authority and occupied solely by the Division of Corrections, the Division of Health and the Legislature.

#### **§42-15-4. Adoption of federal standards; additional state standards.**

4.1. The code of federal regulations, 29 CFR §1900-1999, setting forth all occupational safety and health standards as recognized by the United States Secretary of Labor under the authority of the Occupational Safety and Health Act of 1970, as in effect on the effective date of this rule, are incorporated by reference as the state standards.

4.2. Additional state standards.

[RESERVED]

**§42-15-5. Duties of employers and employees.**

**5.1. Each employer shall:**

- (a) Furnish to each of his or her employees employment and a place of employment which are free from recognized hazards causing or likely to cause death or serious physical harm to the employees;
- (b) Comply with all safety and health standards as adopted by this rule;
- (c ) Comply with all orders and directives issued by the commissioner;
- (d) Provide safety and health training to each employee with particularity to his or her respective work assignment. The employer may contract for training services, and utilize training packages and services available from the division or may design and utilize his or her own individual training program. The employer shall submit to the Commissioner for prior approval, all training programs utilized by the employer to insure that they fully comply with the provisions of this rule and W.Va. Code §21-3A-1 et seq;
- (e) Maintain records of occupational injuries and illnesses in accordance with the requirements of 29 CFR §§ 1900-1999; and
- (f) Notify the Commissioner within eight hours of the occurrence of : i) any workplace fatality; ii) or any single accident which requires emergency room treatment or the hospitalization of three (3) or more employees.

**5.2. Each employee shall:**

- (a) Complete safety and health training as required by the employer or the commissioner;
- (b) Comply with all safety and health standards as adopted by the commissioner; and
- (c ) Immediately notify his or her employer of any known safety and health hazard or other violation of the safety and health standards. The employer shall keep a written record of the notifications for a period of not less than two (2) years.

**5.3. No employer may discharge or in any manner discriminate against any employee because the employee:**

- (a) Filed any complaint;
- (b) Instituted or caused to be instituted or participated in any proceedings under or

related to the Act or the provisions of this rule;

(c ) Testifies or plans to testify in any such proceeding; or

(d) Has exercised on behalf of himself or herself or others any right afforded by the Act or this rule.

**§42-15-6. Inspections and investigations.**

6.1. The Commissioner shall perform inspections and investigations at any work place or environment where work is performed by an employee. Each workplace shall be inspected in response to complaints filed, upon employer request and as the commissioner determines that conditions may warrant.

6.2. Any employee or representative of employees who believes that there exists a violation of a standard or that there is an imminent danger of physical harm, may request an inspection.

(a) A request for inspection shall include:

- (1) The name of the employee, employees or representative of the employees making the request and shall include the employee's, employees' or employees representative's address and telephone number ;
- (2) With particularity, the grounds for the request, including the standard or standards believed to be violated, if known;
- (3) The name and address of the employer;
- (4) The physical location of the alleged violation or violations;
- (5) The signature of the employee, employees or employee representative;
- (6) The date of the request; and
- (7) A statement by the person or persons making the request for inspection that a copy of the request has been provided to the employer and the date that the notice was given. Provided, However that upon the request of the person making the request for inspection, the name or names of the person or persons making the request shall not appear in the copy or on any record published, released or made available pursuant to W.Va. Code §21-3A-8(g).

(b) If, upon receipt of the request for inspection, the commissioner determines there are reasonable grounds to believe that a violation of safety and health

standards or imminent danger of physical harm exists, the commissioner shall inspect the workplace in accordance with the provisions of the Act as soon as practicable to determine if the violation or danger exists.

- (c ) If, upon receipt of the request for inspection, the commissioner determines that there are no reasonable grounds to believe that a violation of safety and health standards exists, he or she shall notify the employer, the employee or the representative of employees in writing of the determination. The notification does not preclude the Commissioner from instituting future enforcement action if conditions change or if additional facts become available.
- (d) Any person adversely affected by the actions of the Commissioner upon a request for inspection is entitled to an appeal hearing before the Commission in accordance with the provisions of section nine of this rule.

6.3. The Commissioner or his or her designated representative, upon presentation of appropriate credentials, may:

- (a) Enter at reasonable times, any workplace or work environment where work is performed by employees of an employer. No employer may refuse to allow the Commissioner or designated representative to inspect a place of employment. If an employer attempts to obstruct an inspection, the Commissioner may obtain an inspection warrant from the circuit court of Kanawha County or the circuit court of the county where the employer is located;
- (b) Inspect all physical facilities, structures, machines, apparatus, devices, equipment, vehicles and materials contained therein and observe practices, in use within the work environment. The Commissioner or his or her designated representative may include a representative of the employer and a representative authorized by the employees in the inspection;
- (c ) Openly inspect all records and reports required by the Act or the provisions of this rule to be kept or filed by the employer;
- (d) Privately interview or question any person employed by the employer; and
- (e) Require testimony of witnesses and the production of evidence under oath.

6.4. The Commissioner shall prepare a written report for every inspection and investigation conducted under authority of the Act. The report shall contain at a minimum the:

- (a) The name and identification of the inspector or investigator;

- (b) The date of the inspection or investigation;
- (c ) The name and address of the employer;
- (d) The physical location of the inspection or investigation;
- (e) The names and titles of the employer and employee representatives who participated in the inspection or investigation; and
- (f) Attached copies of all citations issued as a result of the inspection or investigation.

6.5. All reports of inspection and investigation are confidential until such time as all matters at issue contained in the report are resolved.

#### **§42-15-7. Citations.**

7.1. If, upon inspection or investigation, the Commissioner or his or her designated representative determines that an employer has violated any safety and health standard, or finds a condition which poses a recognized hazard likely to cause death, serious injury or illness, the Commissioner shall issue a citation to the employer or employee.

- (a) The citation shall be in writing and delivered by personal service or certified mail.
- (b) The citation shall state with particularity the nature of the violation, including a reference to the provision of the Act, or the standard, rule or order alleged to have been violated. The citation shall fix a date by which the employer or employee shall correct the violation.
- (c ) The citation shall contain a notification informing the employer or employee that he or she has fifteen (15) days from receipt of the citation to contest the citation or seek a variance. A request to contest a citation or to seek a variance shall be in writing, addressed to the Commissioner. If the employer or employee fails to contest the citation or seek a variance, the citation, as proposed, becomes final and is not subject to review by any court or agency.
- (d) If the employer or employee fails to contest the citation or seek a variance and fails to correct the violation by the correction date contained in the citation, the Commissioner shall seek judicial enforcement to compel compliance with the citation.
- (e) If the employer or employee contests a citation or request a variance, the Commissioner shall immediately advise the commission, which shall afford the



employer or employee an opportunity for a hearing.

7.2. The employer shall post each citation issued under this section or a copy or copies of the citation in a place accessible by all employees of the employer to include the places where employee notices are normally posted. In cases where there exists continued exposure to physical hazards, a copy of the citation shall be posted in the immediate physical area where the violation is alleged to have occurred.

**§42-15-8. Research; education and training programs.**

8.1. The Commissioner shall annually collect data from employer records of occupational injuries and illnesses. The Commissioner shall use this data to analyze the performance of employers and employees and to evaluate the effectiveness of existing safety and health programs.

8.2. The Commissioner may initiate any other research project he or she considers necessary to reduce the numbers and severity of occupational injuries and illnesses when he or she detects abnormally high rates of occurrence during the annual review or by on-site inspection.

8.3. The Commissioner shall develop directly, or by grants or contract, basic occupational safety and health training courses with a level of diversity necessary to provide training specific to all work environments covered by this rule. These basic courses shall be designed to be suitable for all employees.

8.4. The Commissioner shall develop directly, or by grants or contract, technical training courses designed to train and update management level personnel and those charged with occupational safety and health over-site responsibilities within a specific work environment. These technical courses shall provide a level of diversity necessary to meet the needs of any work environment covered by this rule.

8.5. The Commissioner may require special training of employers and employees in work environments where research data indicates abnormally high occurrences of occupational injuries and illnesses or where an unusual hazard exposure exists.

8.6. In the development of all training programs, the Commissioner shall consult with and advise affected employers, employees and employee representatives as to the effective means of preventing occupational injuries and illnesses.

**§42-15-9. Optional coverage by political subdivisions.**

9.1. Any county or municipality or department, division, bureau, board, council, agency or authority thereof or school district or special purpose district which elects to be

covered by the Act shall provide to the Commissioner a true copy, with its seal attached, of the ordinance, resolution or other legal procedure followed explicitly electing coverage. The ordinance, resolution or other legal procedure followed shall specifically state the body will enter into an agreement with the Commissioner specifically identifying:

- (a) Which workplace and/or group of employees are to be covered;
- (b) That the coverage will be for a period of not less than twelve months from the date of the agreement with the Commissioner; and
- (c) That the body agrees to abide by all training requirements, citations, directives or orders of the Commissioner or commission which arise during the coverage period, and even if they become final after the coverage period expires.

**Senate Bill No. 314**

42-15

(By Senator(s) Ross, Anderson, Bowman,  
Macnaughtan, Boley and Buckalew)

[Introduced January 30, 1998; referred to the  
Committee on Labor; then to the Committee on  
Finance; and then to the Committee on the  
Judiciary.]

9

10 A BILL to amend article ten, chapter sixty-four of the code  
11 of West Virginia, one thousand nine hundred  
12 thirty-one, as amended, by adding thereto a new  
13 section, designated section three, relating to  
14 authorizing the division of labor to promulgate a  
15 legislative rule relating to the West Virginia  
16 occupational safety and health act.

17 *Be it enacted by the Legislature of West Virginia:*

18 That article ten, chapter sixty-four of the code of  
19 West Virginia, one thousand nine hundred thirty-one, as  
20 amended, be amended by adding thereto a new section,  
21 designated section three, to read as follows:

22 ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO  
23 PROMULGATE LEGISLATIVE RULES.

1 §64-10-3. Division of labor.

2       The legislative rule filed in the state register on  
3 the thirty-first day of July, one thousand nine hundred  
4 ninety-seven, under the authority of section six, article  
5 three-a, chapter twenty-one, of this code, modified by the  
6 division of labor to meet the objections of the legislative  
7 rule-making review committee and refiled in the state  
8 register on the first day of December, one thousand nine  
9 hundred ninety-seven, relating to the division of labor  
10 (West Virginia occupational safety and health act, 42 CSR  
11 15), is authorized.

12

13       NOTE: The purpose of this bill is to authorize the  
14 Division of Labor to promulgate a legislative rule relating  
15 to the West Virginia Occupational Safety and Health Act.

16

17       This section is new; therefore, strike-throughs and  
18 underscoring have been omitted.

8L17

d 2-15

1 Bill-Labor

**H. B. 4178**

2

(By Delegates Hunt, Linch, Compton, Jenkins,  
Faircloth and Riggs)

3

4

[Introduced January 30, 1998; referred to the  
Committee on the Judiciary.]

5

6

7

8

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4178

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