

MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ACT (EXCERPT)
Act 154 of 1974

408.1029 Inspection and investigations; right of entry; warrant; witnesses; evidence; right of accompaniment; advance notice; tests and samples; evaluation; confidentiality of trade secrets; conference; liability for damages; discrimination prohibited; “wages and fringe benefits” defined.

Sec. 29.

(1) To implement this act, a department representative, upon presenting appropriate credentials, may enter without delay, and at reasonable times, a place of employment to physically inspect or investigate conditions of employment and all pertinent conditions, equipment, and materials in the place of employment, and to question privately the employer, owner, operator, agent, or an employee with respect to safety or health. The inspection or investigation shall be conducted without unreasonably disrupting the employer's operations.

(2) If permission to enter a place of employment is denied, the department may apply to the proper judicial officer for a warrant commanding the sheriff or a peace officer to aid the department in the conduct of an inspection or investigation to determine if there is a violation of this act or a rule promulgated under this act.

(3) In the conduct of inspections and investigations, the appropriate department 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 circuit courts. In case of a contumacy, failure, or a refusal of a person to obey an order, the circuit court within the jurisdiction of which the investigation is conducted, or where the person is found or resides or transacts business, or the circuit court for the county of Ingham, upon application of the appropriate department, may issue an order requiring the person to appear and produce evidence or give testimony relating to the matter under investigation or in question, and a failure to obey the order of the court may be punished as a contempt.

(4) A representative of the employer and a representative authorized by the employees shall be given the opportunity to accompany the department representative during the inspection or investigation of a place of employment to aid the inspection or investigation, subject to rules promulgated by the department. In case of controversy, the department representative, at the time he or she goes into an establishment, shall determine who may walk around as employer and employee representatives. If a representative authorized by the employee does not participate, the department representative shall consult with a reasonable number of employees concerning matters of safety or health in the place of employment. The right of accompaniment may be denied by the department representative to a person whose conduct interferes with a fair and orderly inspection or investigation.

(5) In conducting or preparing to conduct an inspection or investigation, advance notice of the inspection or investigation shall not be given except in the following situations:

(a) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

(b) In circumstances where the inspection most effectively can be conducted after regular business hours or where special preparations are necessary for an inspection.

(c) If necessary to assure the presence of representatives of the employer and employees, or the appropriate personnel needed to aid in the inspection.

(d) In other circumstances where the department determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(6) Advance notice in any of the situations described in subsection (5) shall not be given more than 24 hours before the inspection or investigation is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

(7) During the conduct of an inspection or an investigation, the department representative may conduct tests and gather samples of materials and substances as are necessary to aid in the evaluation of the place of employment. In implementing this subsection, the confidentiality of trade secrets shall be protected as prescribed in this act.

(8) Subject to rules promulgated by the departments, following the completion of an inspection or investigation, an opportunity for a conference shall be afforded the employer; the employee or employee representative; and the employer and the employee or employee representative if a joint conference is requested.

(9) In the performance of duties in the administration and enforcement of this act, a department representative or an employee of the appropriate department shall not be personally liable for damages sustained by an action on his or her part, except for wanton and wilful negligence.

(10) An employee or the authorized representative of an employee who participates in an inspection or investigation, as provided in subsection (4), or the conference provided in subsection (8), as provided in this section, or the rules promulgated under this section, shall not suffer a loss of wages or fringe benefits, or be discriminated against in any manner, for time spent participating in the inspection, investigation, or conference. An employee or the authorized representative of an employee who suffers a loss of wages or fringe benefits, or is discriminated against in any manner, for participation in an inspection, investigation, or conference, may file a

discrimination complaint, and the department of labor may order appropriate relief, as provided in section 65. As used in this subsection and section 31(2), "wages and fringe benefits" means those terms as defined in section 1 of Act No. 390 of the Public Acts of 1978, being section 408.471 of the Michigan Compiled Laws.

History: 1974, Act 154, Eff. Jan. 1, 1975 ;-- Am. 1979, Act 149, Eff. Mar. 27, 1980