

TITLE 3: HUMAN RESOURCES
DIVISION 4: EMPLOYMENT AND REGISTRATION

§ 4939. Inspection of Worksites.

(a) *Administrative inspections of worksites.* In order to enforce the labor laws of the Commonwealth, the Secretary or a designee may inspect any worksite where foreign national workers are employed.

(1) No warrant is required for inspection of a worksite, and the Department need not present any evidence of a violation of labor laws or regulations as a basis for such an inspection. As a condition of enjoying the privilege of employing foreign national workers in the Commonwealth, every employer who executes an approved employment contract with a foreign national worker shall be deemed to have consented, expressly and in writing, to administrative inspections of the employer's worksites in accordance with the provisions of this chapter.

(2) No notice of the date and time of the inspection need be given to the employer in advance of the actual inspection.

(3) The Department shall furnish, at a reasonable cost, to every employer of foreign national workers whose worksite is subject to inspection a list of revised statutes and regulations describing the employer's obligations and defining the inspector's authority.

(b) *Frequency of inspections.* The rules governing the frequency of administrative inspections shall be prescribed by regulation and published in an administrative schedule.

(c) *Scope of inspections.* The inspector may inspect:

(1) All public areas of the worksite and premises to which the general public might reasonably be expected to have access to during normal business hours;

(2) All areas of the worksite and premises in which workers are observed, or might reasonably be expected to have access to during the normal operation of the employer's business;

(3) The employer's payroll records, approved foreign national worker contracts, or any other documents or business records the employer is required to collect, maintain or produce for inspection pursuant to this chapter, regulations, and the Minimum Wage and Hour Act;

(4) All equipment, machines, tools, or devices any worker might reasonably be expected to use, operate or maintain, in the normal course of the employer's business;

(5) All safety devices, safeguards (such as machine guarding, electrical protection, scaffolding, safe walking-working surfaces, means of egress in case of emergencies or fire, ventilation, noise exposure protection, personal protective equipment for eyes, face, head and feet, fire protection and sanitation), drinking water supply and toilet facilities;

(6) All waste disposal equipment, trash and refuse containers; and

(7) Employer-provided housing and common areas, including, but not limited to: fire protection devices or improvements; sanitation equipment; ventila-

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tion, whether natural or mechanical; drinking water supply; toilet facilities; cooking facilities, equipment and appliances; food and food storage equipment and facilities; lighting; windows and screens; bedding; laundry facilities, equipment and supplies.

(d) *Authority of inspectors.*

(1) If a violation of any labor law or regulation is found, the inspector may issue a citation, notice of violation, or other process intended to correct the violation or enjoin the employer from certain practices or commence an enforcement action against the employer.

(2) The inspector may contact all persons on the worksite to ascertain whether they are foreign national workers and whether they are in possession of valid identification cards, as required by law.

(3) The inspector shall not detain or arrest any person, but may refer any person to another enforcement agency for further action consistent with the laws of the Commonwealth or of the United States.

(e) *Show cause hearing.* The Administrative Hearing Office shall disqualify an employer who has refused inspection from employing foreign national workers for a period of at least six months, unless the employer can prove by clear and convincing evidence, that the inspection:

(1) Was not requested during normal business hours;

(2) Exceeded the frequency of inspections allowed;

(3) Exceeded the scope of inspections allowed or was outside the regulatory authority of the Department;

(4) Was motivated by spite, harassment, or some improper motive unrelated to the enforcement of this chapter;

(5) Was contrary to specific, valid privacy concerns to the employer that are not accommodated by provisions (1) through(4) of this subsection.

(f) *Personnel for inspections.* For purposes of carrying out responsibilities pursuant to this section, the Secretary may, by agreement with other agencies of the Commonwealth government, utilize with or without reimbursement, the services, personnel, or facilities of the other agencies including without limitation the Commonwealth immigration authority.

(g) *Inspections of Worksites Pursuant to Warrant.*

(1) In those instances where the Secretary or a designee intends to inspect any location or worksite in furtherance of obtaining evidence related to a specific criminal investigation, a search warrant from the Commonwealth Superior Court, requiring a showing of probable cause, shall be required.

(2) In the event that an employer refuses consent for an inspection or if the Department's inspection will exceed the scope or frequency of the inspections authorized under subsections (a) through (e) of this section, the Secretary or a designee may seek an administrative warrant from the Department's Administrative Hearing Office.

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(3) An administrative warrant shall be granted if the Department demonstrates to the satisfaction of a hearing officer that one of the following standards has been met:

(i) The worksite has been chosen for an inspection on the basis of a general administrative plan derived from neutral criteria for the enforcement of Commonwealth labor laws and regulations;

(ii) The Department has presented evidence establishing reasonable suspicion of a recent, ongoing or imminent violation of this chapter, regulations, the Minimum Wage and Hour Act, or any other Commonwealth law protecting the health and safety of employees, at the worksite for which the administrative warrant is sought; or

(iii) The Department has presented evidence that the employer has been cited for a violation of Commonwealth labor laws or regulations within the past twelve months at the worksite in question, and the past violation is one that is easily repeated, easily concealed, and poses a risk to the health and safety of one or more employees .

Source: PL 15-108, § 4(4939); (a) through (d) amended by PL 17-1 § 5(Q) (March 22, 2010),* modified.

Commission Comment: The Commission deleted figures that repeated written words pursuant to 1 CMC § 3806(e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.