Cross References

Education Committee of the Navajo Nation Council, see 2 N.N.C. § 484(B)(4).

Government Services Committee of the Navajo Nation Council, see 2 N.N.C. § 343. See CD-68-89, Resolved Clause 10.

Chapter 15. Navajo Nation Occupational Safety and Health Act

History

Former Title 13, Chapter 55 was repealed in its entirety by CAP-39-00, April 20, 2000.

Subchapter 1. General Provisions

§ 1401. Title

This Act shall be cited as the Navajo Nation Occupational Safety and Health Act of 2000.

History

CAP-39-00, April 20, 2000.

§ 1402. Purpose

A. The Navajo Nation hereby asserts its inherent sovereign authority of self-government to promulgate, prescribe and enforce this Occupational Safety and Health Act and regulations to assure every working person safe and healthy working conditions by providing for:

1. The establishment of Occupational Safety and Health regulations applicable to all workplaces within the territorial jurisdiction of the Navajo Nation including, but not limited to, the Navajo Nation Government, its enterprises, entities, agencies, chapters, and any contractors with the Navajo Nation.

2. Effective enforcement of the Occupational Safety and Health standards, rules and regulations.

3. Education and training programs for employers and employees to address their responsibilities under the Navajo Nation Occupational Safety and Health Act, and advise and assist about the effective means of preventing occupational injuries and illnesses.

4. The development and maintenance of appropriate job-related accident and illness reporting procedures that will ensure compliance with the objectives of the Occupational Safety and Health Act.

B. The administration and enforcement of the Navajo Safety and Health Act shall use appropriate measures to foster sensitivity and respect for Navajo

Indian cultural beliefs and practices in achieving harmony and fulfilling the challenge of providing safe and healthy working conditions for Navajo employees.

History

CAP-39-00, April 20, 2000.

§ 1403. Applicability

The Navajo Nation Occupational Safety and Health Act shall apply to all workplaces within the territorial jurisdiction of the Navajo Nation in accordance with purposes set forth in § 1402.

History

CAP-39-00, April 20, 2000.

Subchapter 2. Definitions

§ 1411. Definitions

Except as specifically defined herein, the terms used in this Act shall be given the same meaning as the identical terms set forth in P.L. 91-596, the Occupational Safety and Health Act of 1970, 29 U.S.C. § 654 *et seq.*, and other federal regulations promulgated pursuant to such Act.

A. "Act" means the Navajo Nation Occupational Safety and Health Act of 2000.

B. "Agency" means the Navajo Occupational Safety and Health Administration (NOSHA).

C. "Committee" means any Occupational Safety and Health Advisory Committee established under the Navajo Nation Occupational Safety and Health Administration.

D. "Court" means the system of the Navajo Nation (District and Supreme Court).

E. "Director" means the director of the Navajo Occupational Safety and Health Administration.

F. "Employee" means any individual who is employed by an employer, but does not include a domestic employee engaged in household domestic labor.

G. "Employer" means any individual or organization, including the Navajo Nation and all its political subdivisions, which has in its employ six or more individuals performing services for it, but does not include employers of household domestic labor.

H. "Hazards" means any toxic materials or harmful physical agents at a level in excess of those prescribed by the Federal Occupational Safety and

Health Standards, or any applicable national consensus standard, or any level hereby prescribed by NOSHA.

I. "Hearing officer" means the Administrative/Judicial Officer assigned by the Navajo Nation Office of Hearings and Appeals to hear, review and decide administrative matters and disputes which arise under the Act.

J. "Interested party" means an employer or employee that is affected by any standard, regulation, or order issued under this Act.

K. "Label" means any written, printed or graphic material displayed on or affixed to containers of chemicals or other products which identifies the chemicals or other products.

L. "Navajo" means any enrolled member of the Navajo Nation as defined by 1 N.N.C. Chapter 7, § 701, *et seq*.

M. "Nation" means the Navajo Nation as defined by 1 N.N.C. Chapter 5, § 501.

N. "Person" means any individual partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or their legal representatives, agents or assigns.

O. "Safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

P. "Petitioner" means a person who files a petition seeking to initiate a hearing proceeding under the Act.

Q. "Territorial jurisdiction" means the territory within which the Navajo Nation has authority to interpret and apply its laws, as defined in 7 N.N.C. Chapter 3, § 254.

R. "Workplace" means a location or site wherein work, either temporary or permanent is being conducted in connection with an industry, trade or business.

History

CAP-39-00, April 20, 2000

Note. The citations in Subsections 1411(L), (M) and (Q) were corrected to properly correspond to the 1995 edition of the Navajo Nation Code in the following manner: § 1411(L)—"1 N.N.C. Chapter 7, Section 501 *et seq*." corrected to "Section 701 *et seq*."; § 1411(M)—"1 N.N.C. Chapter 5, Section 301" corrected to "Section 501"; and § 1411(Q)—"7 N.N.C. Chapter 3, Section 54" corrected to "Section 254".

Subchapter 3. Notice of Enactment

§ 1421. Adoption of standards by reference

A. The Agency hereby adopts the federal occupational safety and health standards as currently promulgated or hereafter amended (including, but not limited to, those for general, construction, agricultural, and maritime industries) as its interim standards for occupational safety and health purposes, including the standards for training of employers and employees. Those substantive standards to address working conditions will be given to the extent practicable, the adoption and/or interpretation of any such regulations will be in harmony with traditional Navajo cultural beliefs and practices.

B. The Agency shall promulgate regulations that are and will continue to be at least as stringent as standards promulgated pursuant to the federal occupational safety and health of employees. In adopting, amending or repealing its regulations, the Agency shall provide an opportunity for representatives of employers and employees affected by the regulations to be heard and shall weigh all relevant facts and circumstances presented at the public hearing, including but not limited to:

1. Character and degree of injury to or interference with the safety and health of employees proposed to be abated or prevented by the regulations.

2. Technical practicability and economic reasonableness of the regulation and the existence of alternatives to the prevention or abatement of detriment to the safety and health of employees proposed by the regulation; and

3. The public interest, including, but not limited to, the social and economic effects of work-related accidents, injuries and illnesses.

History

CAP-39-00, April 20, 2000.

§ 1422. Development of standards and regulations

A. Safety and health standards, rules and regulations shall be formulated in the following manner:

1. The Agency shall either propose adoption of national consensus standards or federal standards or draft such regulations, as it considers necessary after conducting sufficient investigations and consulting with the appropriate committee and other persons knowledgeable in the business for which the standards or regulations are being formulated.

2. Proposed standards or regulations, or both, shall be submitted to the Human Services Committee of the Navajo Nation Council for its approval. Upon approval of the proposed standards or regulations, or both, the standards or regulations will take effect as provided in the regulation or standards. In the event, the Human Services Committee fails to take any action on the proposed standards or regulations within 90 days of submittal, the proposed standards or regulations shall automatically become effective at the expiration of that time.

B. The Agency shall not propose standards and regulations for products distributed or used in interstate commerce which are different from federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce.

C. Any standards or regulations promulgated under this Section shall prescribe the use of labels or other appropriate forms of warning necessary to ensure that employees are apprised of all recognized hazards to which they are exposed, relevant symptoms and appropriate emergency treatment and proper conditions and precautions of safe use or exposure. Where appropriate, such standards or regulations shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such locations and intervals and in such manner as may be necessary for the protection of employees. In addition, where appropriate any such standards or regulations shall prescribe the type of frequency of medical examination or other test which shall be made available, by the employer at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. Any standards or regulations promulgated pursuant to this Section shall assure, as far as possible, that no employee will suffer material impairment of health or functional capacity even if such standard is for the period of his working life.

D. In case of conflict between standards and regulations, the regulation shall take precedence.

E. Any person who may be adversely affected by a standard or regulation issued under this Act may, at any time prior to the expiration of 60 calendar days after such standard or regulation is promulgated, file a complaint challenging the validity of such standard or regulation with the Agency hearing officer for an administrative review of such standard or regulation. The filing of such a complaint shall not, unless otherwise ordered by the hearing officer, operate as a stay of the standard or regulation. The determination of the hearing officer shall be conclusive if supported by substantial evidence in the record considered as a whole.

History

CAP-39-00, April 20, 2000.

Subchapter 4. Administration

§ 1431. Designation of agency

Navajo Occupational Safety and Health Administration (NOSHA) is hereby designated as the regulatory agency to administer the Navajo Nation Occupational Safety and Health Act, and authorized to take all actions necessary to secure to the Navajo Nation the benefits of federal Occupational Safety and Health Administration consultation services and federal legislation related to the Occupational Safety and Health Act of 1970.[1]

History

CAP-39-00, April 20, 2000.

§ 1432. Duties and responsibilities of the Agency

A. Navajo Occupational Safety and Health Administration (NOSHA) is hereby established within the Division of Human Resources and delegated to administer the Navajo Nation Occupational Safety and Health Act of 2000.

B. The Director is authorized to exercise all authority necessary to implement this Act, in a manner consistent with applicable law. Specifically, the Director, or his designee, shall:

1. Recommend to the Human Services Committee all standards, regulations or changes to the Act, pursuant to § 1422.

2. Enforce all standards or regulations, after promulgation by the Human Services Committee, pursuant to the procedures and requirements of the Act.

3. Implement Navajo Nation Occupational Safety and Health Administration programs and execute associated duties and responsibilities that shall include, but not be limited to, the following:

a. Develop an occupational safety and health education and training program to acquaint employers and employees with the Act, and the most modern and effective techniques of accident prevention and occupational health control.

b. Institute legal proceedings to compel compliance with the Act.

c. Plan, organize, and conduct occupational safety and health seminars, conferences and meetings designed for management, supervisory personnel, employees and employers and establish working relationships with other safety and health groups as may be necessary.

d. Accept, receive and administer grants and other funds or gifts from public or private agencies, including the federal government.

4. Develop and maintain an effective program of collection, compilation and analysis of occupational safety and health statistics. The Agency shall compile statistics on work injuries and illnesses, which shall include all disabling, serious or significant injuries and minor injuries which require more than first aid treatment.

5. Coordinate the responsibilities and functions of other government agencies and political subdivisions of the Nation with regard to occupational safety and health in order to develop a comprehensive Navajo Nation program.

6. Perform any and all duties not inconsistent with the purposes of this Act.

History

CAP-39-00, April 20, 2000.

§ 1433. Advisory Committee

A. The Agency may create an Occupational Safety and Health Advisory Committee to assist the Agency in developing the proposed standards and regulations. Such Advisory Committee shall be appointed by the Agency Director and shall be comprised of persons with knowledge and expertise concerning the particular aspect of occupational safety and health for which they are appointed to assist the Agency. Such persons shall fairly represent a variety of regulated industries, including agriculture whenever applicable, and include persons with general knowledge of occupational safety and health issues.

B. The Director shall be an ex officio member of the Advisory Committee.

C. Persons appointed to serve on a committee(s) shall not be entitled to compensation for their services.

D. Service on any particular committee will continue until such time as the standards and regulations being developed by that committee have been submitted to the Agency Director. Thereafter, the Agency Director for consultation purposes, will disband the committee, subject to recall.

History

CAP-39-00, April 20, 2000.

§ 1434. Administrative hearing officer

A. The Office of Hearings and Appeals shall hear cases arising from the Act.

B. Every official act of the hearing officer shall be recorded and such records shall be open to the public. The hearing officer is empowered to make such rules as are necessary for the orderly transaction of administrative proceedings.

C. NOSHA shall provide the administrative support and personnel to the hearing officer as necessary for the efficient administration of the activities. All personnel assigned to the hearing officer shall be under the supervision of the Director.

History

CAP-39-00, April 20, 2000.

Subchapter 5. Responsibilities

§ 1441. Employer and employee

A. Employer.

1. Every employer shall furnish to each employee a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm.

2. Every employer shall comply with the safety and health standards and the regulations and orders issued pursuant to this Act.

3. Until such safety and health standards and/or regulations and/or orders are issued pursuant to this Act, every employer shall comply with all relevant regulations issued pursuant to P.L. 91-596, the Occupational Safety and Health Act of 1970, 29 U.S.C. § 654 *et seq*. After any such safety and health standards and/or regulations and/or orders are issued pursuant to this Act (15 N.N.C. § 1401 *et seq*.), to the extent they are inconsistent with the federal regulations, the Navajo regulation will prevail.

4. Every employer shall, through posting of notices at the place or places where notices to employees are normally posted, or other appropriate means, keep employees informed of the obligations under the Occupational Safety and Health Act, including provisions of applicable regulations.

B. Employee. Each employee shall comply with the provisions of the occupational safety and health standards and any regulations and orders promulgated which are applicable to employee actions and conduct in the course of employment.

History

CAP-39-00, April 20, 2000.

Subchapter 6. Inspection

§ 1451. Right of entry and inspection of place of employment

A. In order to carry out the purpose of the Act, the Director or his authorized representative, upon presentation of credentials shall be permitted to inspect places of employment, question employees, and investigate conditions, practices or matters in connection with issues of employee safety and/or health. Such inspections must take place at reasonable times, as determined by the Director or his authorized representative, for the purpose of determining whether any person has violated any provisions of the Act, or any rule or regulation issued thereunder. No employer or other person shall refuse to admit the Director or his authorized representative to any such place or refuse to permit any such inspection if the proper credentials are presented and the inspection is made at a reasonable time.

B. Any person, including any employee may file a written complaint with the Agency concerning any alleged violation of a regulation or any hazardous condition. A copy of the complaint shall be provided to the employer at the time of the inspection. However, upon the request of the complainant, the complainant's name shall not appear on the copy. The Agency shall investigate

the complaint and notify the complainant and employer in writing of the result of the investigation and any action to be taken. If no action is contemplated, the Agency shall notify the complainant and include an informal review of any decisions not to take compliance action at the request of the complainant. The person who investigated the complaint shall not make the review.

C. In order to aid inspections, the employer or his representative and a representative of the employees shall be given an opportunity to accompany the Agency inspector during the physical inspection of the workplace. If there are no authorized employee representatives, the Agency inspector shall consult with a reasonable number of employees.

D. Prior to and during any inspection of a workplace, any persons employed in such workplace may notify the Agency or the Agency inspector in writing of any violation of the Act, which they have reason to believe exists in such workplace. The Agency shall establish procedures for informal review of the decision made by the inspector and if no citation is issued with respect to the alleged violation, the Agency shall furnish the employee requesting such review a written statement of the reason for the Agency's final disposition of the case.

E. If an inspection reveals that employees are exposed to toxic materials or harmful physical agents at levels in excess of those prescribed by regulations of the Act, the Agency shall provide the employees with access to the results of the inspection. The employer shall promptly notify those employees who are exposed to the agents or materials in excess of the applicable regulations and inform them of the corrective action being taken, or that review has been requested in accordance with § 1471(E).

F. It is unlawful for any person to give advance notice of any inspection to be conducted under the Act without the written approval of the Director.

G. The Director, in addition to initiating an investigation under Subsection (B) of this Section, may file in the District Court where the inspection was refused a complaint against an employer who violates Subsection (A) of this Section and request an injunction against continued refusal to permit an inspection, or a writ of assistance or enforcement order to implement the requested action.

History

CAP-39-00, April 20, 2000.

Note. Subsection (C) slightly reworded for clarity.

Note. Reworded for purposes of statutory form.

Subchapter 7. Citation

§ 1461. Citation

A. If the Director, in performing an inspection or investigation, determines that there is reasonable belief that a violation exists, he shall

with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall contain the following:

1. A particular description of the nature of the violation, including a reference to the particular provision of the standard or regulation alleged to have been violated.

2. A reasonable time for the abatement of the violation.

3. A notice that the employer may request a hearing pursuant to § 1491 if he is aggrieved by the citation.

B. A certified mail delivery receipt or a signed verification of delivery in person shall be prima facie evidence of receipt of a citation.

History

CAP-39-00, April 20, 2000.

Subchapter 8. Enforcement

§ 1471. Enforcement procedures

A. If the Director, following an inspection or investigation, issues a citation pursuant to § 1461 of the Act, he shall, within reasonable time, notify the employer by certified mail of any penalty proposed to be assessed pursuant to § 1481 of the Act. Each citation issued, or a copy thereof, shall be promptly and prominently posted by the employer, as prescribed in regulations issued by the Agency, at or near the place where the violation occurred. No citation may be issued under this Section after six months following occurrences of any violation. The Agency may issue an advisory notice setting forth de minimis violations of standards or regulations which shall carry no penalty, unless the employer willfully and repeatedly violated such standard or regulation, in which case the Agency may refer the matter to the hearing officer for appropriate action pursuant to § 1481 of the Act.

B. If the Agency issues a citation under Subsection (A) of this Section, it shall, within a reasonable time after issuance of said citation, notify the employer by certified mail of the penalty, if any, proposed to be assessed and that the employer has 15 working days within which to notify the Agency in writing that he wishes to contest the citation or proposed penalty. If, within 15 working days from the receipt of this citation, notification of intent to contest is not given by an employer as provided in Subsection (E) of this Section within such time, the citation and the assessment of penalty, if any, as proposed, shall be deemed the final order of the Agency and not subject to review by the hearing officer or Court.

C. If the Agency has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the abatement period permitted (which period shall not begin to run until the entry of a final order by the hearing officer in the case of any review proceedings under this Section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the Agency shall notify the employer by certified

mail of such failure to correct and of the penalty proposed to be assessed by reason of such failure, and that the employer has 15 working days within which to notify the Agency that it intends to contest the proposed assessment of penalty, the notification and assessment shall be deemed a final order of the Agency, and not subject to review by the hearing officer or Court.

D. Any employer that corrects violations for which a citation was issued within the period permitted shall so notify the Director in writing.

E. When an employer notifies the Agency in writing that it intends to contest the citation issued to it under Subsection (A) or notification is issued under Subsection (B) or (C) of this Section, and any employee of any employer so cited files a notice with the Agency alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Agency shall provide prompt opportunity for informal administrative review. If the matter is not successfully resolved at the informal administrative review, the petitioner may request a hearing before the hearing officer within 15 days after the informal administrative review. The hearing officer shall afford an opportunity for a hearing within 30 days after receipt of such petition. In any such hearing, the employer shall be the respondent. The burden of proof shall be on the Agency (or the petitioner) to prove by substantial evidence non-compliance on the part of the employer. The hearing officer shall thereafter issue an order, based on findings of fact, affirming, modifying or vacating the Agency's citation proposed penalty or directing other relief. Such order shall become final 15 days after its issuance.

F. At any time prior to the expiration of an abatement period, an employer may notify the Agency in writing that it is unable to take the corrective action required within the period of abatement. The Agency shall provide prompt opportunity for informal administrative review. If the matter is not successfully resolved at the informal administrative review, the employer may request a hearing before the hearing officer. The hearing officer shall afford prompt opportunity for a hearing after receipt of such petition. The only grounds for modifying an abatement period under this Subsection are a showing by the employer of a good faith effort to comply with the abatement requirement of a citation, and that abatement has not been completed because of factors beyond the employer's control.

G. Affected employees shall be provided an opportunity to participate as parties at informal Agency administrative reviews and hearings under this Section.

H. Any person adversely affected by an order of hearing officer issued under this Section may, after exhausting his administrative remedies, obtain a review.

History

CAP-39-00, April 20, 2000.

Note. Reworded for purposes of statutory form.

§ 1472. Emergency procedures

A. The Director shall have authority to restrict any conditions or practices in any place of employment that could create an imminent risk of death or serious physical harm. Any order issued under this Section may require such steps as may be necessary to avoid, correct or remove such danger or to maintain the capacity of a continuous operation up to the time that normal operations can be resumed, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

B. When the Director determines that an emergency exists, he shall immediately inform the employee and employer of the hazards and take steps to obtain immediate abatement of the hazards by the employer.

C. The Director may file a petition in the District Court for a temporary restraining order or preliminary injunction pending the outcome of an enforcement proceeding pursuant to the Act.

History

CAP-39-00, April 20, 2000.

§ 1473. Confidentiality of trade secrets

All information reported to or otherwise obtained by hearing officer or Agency in connection with any inspection or investigation under this Act which contains or which might reveal a trade secret shall be considered confidential for purposes set forth in this Act, except that such information may be disclosed to representatives of the Navajo Nation regulatory agency administering this Act or when relevant in any proceeding under this Act. The Director or hearing officer shall issue orders as may be appropriate to protect the confidentiality of trade secrets.

History

CAP-39-00, April 20, 2000.

Subchapter 9. Penalties

§ 1481. Penalties

A. Any employer who willfully or repeatedly violates any provisions of the Act or any regulation or order promulgated pursuant thereto may be assessed a civil penalty not to exceed five thousand dollars ($5,000) for each violation.

B. Any employer who has received a citation for a serious violation of any provision of the Act or any regulation or order promulgated pursuant thereto shall be assessed a civil penalty not to exceed five hundred dollars ($500.00) for each such violation.

C. Any employer who has received a citation for a violation for any provision of the Act or any regulation or order promulgated pursuant thereto which is determined not to be of a serious nature, may be assessed a civil penalty of up to five hundred dollars ($500.00) for each such violation.

D. Any employer who fails to correct a violation for which a citation has been issued within the period permitted for its correction, which period shall be suspended in the case of a review proceeding before the hearing officer initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty not to exceed five hundred dollars ($500.00) for each day during which such failure or violation continues.

E. Any employer who violates any of the posting requirements, as prescribed by the Act, shall be assessed a civil penalty not to exceed five hundred dollars ($500.00) for each violation.

F. Any employer who willfully violates any provision of the Act or any regulation or order promulgated pursuant thereto which results in death to any employee by violation shall, upon conviction, be punished by a fine of not more than five thousand dollars ($5,000) or by imprisonment for not more than six months or both; except that if the conviction is for a violation committed after a first conviction of such employer, punishment shall be by a fine of not more than ten thousand dollars ($10,000) or by imprisonment for not more than one year, or both.

G. Any person who gives advance notice of any inspection to be conducted under this Act, without authority of the Director shall, upon conviction be punished by a fine of not more than five thousand dollars ($5,000) or by imprisonment for not more than six months, or both.

H. Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than five thousand dollars ($5,000) for each such violation or by imprisonment for not more than six months, or both.

I. A person who reveals a trade secret in violation of § 1473 may, upon conviction be punished by a fine of not more than five thousand dollars ($5,000) or by imprisonment for not more than six months, or both.

J. The hearing officer shall have authority to assess all civil penalties provided in this Section, giving due consideration to the appropriateness of the penalty with respect to the number of employees employed by the employer being charged, the gravity of the violation, the good faith of the employer and the history of previous violations. If the Agency prevails, the hearing officer shall award reasonable attorney fees incurred pursuant to this Section. Otherwise, no award of attorney's fees shall be made.

K. Civil penalties imposed under this Section shall be paid into the Agency general fund account and expended in accordance with the general fund account and pursuant to an approved budget.

History

CAP-39-00, April 20, 2000.

Subchapter 10. Appeals

§ 1491. Appeal procedures

A. Any interested party adversely affected by the standards, regulations or orders issued under this Act may appeal in accordance with the following procedures:

1. A request for a hearing shall be made in writing, signed by the interested party and include his address, a statement that a hearing is desired, and be mailed to the hearing officer. The request shall state with particularity the violation, abatement period or penalty which is protested. Any violation, abatement period or penalty not protested within the time limit specified on the citation or penalty notice will be deemed admitted.

2. The hearing officer shall schedule a hearing as expeditiously as possible, but in no event more than 30 days after an interested party requests a hearing.

3. At least five calendar days prior to any hearing, notice of the time and place of such hearing shall be given to all interested parties by mail at their last known address. The hearing shall be held in the district where the violation occurred or such other place as selected by the hearing officer.

4. The burden of proof shall be on the Agency. The standard of proof will be by substantial evidence.

5. A record shall be kept of all proceedings at the hearing but need not be transcribed unless a party requests a review of the decision of the hearing officer. The hearing record shall be transcribed at the expense of the party requesting review. The hearing officer shall certify the record to be true and accurate.

6. The decision of the hearing officer shall be filed with the Agency and a copy thereof mailed to the parties.

a. All decisions of the hearing officer shall be in writing.

b. A decision of the hearing officer is binding upon the Director and the Agency with respect to the parties involved in the particular case. The Director shall have the right to seek judicial review of the hearing officer's decision, regardless of whether he appeared or participated in the hearing itself.

B. Any interested party adversely affected by the hearing officer's decision may, after exhausting his administrative remedies as set forth in § 1491(A), obtain a review thereof in the Supreme Court of the Navajo Nation by filing in such court, timely and required documents consistent with its rules praying that the order be modified or set aside. The findings of the hearing officer with respect to questions of fact, if supported by substantial evidence, shall be conclusive. Upon appeal, the Court may set aside an action

or ruling of the hearing officer only if found to be:

1. Arbitrary, capricious or an abuse of discretion;

2. Not supported by substantial evidence; or

3. Beyond the scope of legal authority.

History

CAP-39-00, April 20, 2000.

§ 1492. Variances

A. Temporary Variances.

1. Any employer may apply to the hearing officer for a temporary variance from a standard or regulation or any provision thereof promulgated under § 1421 and/or § 1422 of this Act.

2. Such temporary variance shall be granted only if the employer files an application which meets the requirements of § 1492(A)(4) and establishes all of the following:

a. Employer is unable to comply with a standard or regulation by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or regulation or because necessary construction or alteration of facilities cannot be completed by the effective date.

b. Employer is taking all available steps to safeguard his employees against the hazards covered by the standard or regulation.

c. Employer has an effective plan of coming into compliance with the standard or regulation as quickly as practicable.

3. Any temporary variance issued under this Section shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail his plan for coming into compliance with the standard or regulation. Such a temporary variance may be granted only after notice to employees and an opportunity for a hearing before the hearing officer. A hearing must be requested within 20 days of such notice to employees. The hearing officer may issue one temporary variance to be effective until a decision is made on the basis of the hearing. No temporary variance may be in effect for longer than the period needed by the employer to achieve compliance with the standards and regulations, or 90 days, whichever is shorter, except that such a variance may be renewed one time so long as the requirements of the Section are met and an application for renewal is filed at least 30 days prior to the expiration date of the underlying variance. No temporary variance, including any renewals thereof, may remain in effect for longer than 180 days.

4. An application for a temporary variance under this Section shall contain all of the following:

a. The standard or regulation or portion thereof from which the employer seeks a variance.

b. A statement by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or regulation or portion thereof and a detailed statement of the reasons therefor.

c. A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard or regulation.

d. A statement of when the employer expects to comply with the standard or regulation and what steps have been taken and what steps will be taken, with dates specified, to come into compliance with the standard or regulation.

e. A certification that the employer has informed his employees of the application by giving a copy thereof to the employees, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The notice to employees shall also inform of their right to petition the hearing officer for a hearing.

5. The Director is authorized to grant an experimental variance from any standards or regulation or portion thereof whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by the Director and designed to demonstrate or validate new and improved techniques to safeguard the safety or health of the workers. An employer applying for an experimental variance must comply with the requirements of § 1492(A)(4)(a), (c) and (e).

B. Permanent variances.

1. Any affected employer may apply to the Director for a permanent variance from a standard or regulation promulgated under § 1421 and/or § 1422 of this Act. The affected employers shall give notice to its employees of each such application and an opportunity to participate in a hearing. The Director shall issue such variance if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthy as those which would prevail if the employer complied with the standard or regulation from which the variance is being sought. The variance so issued shall prescribe the conditions the employer must maintain, the practices, means, methods,

operations and processes that he must adopt and utilize, to the extent they differ from the standard or regulation in question. Such a rule or order may be modified or revoked upon application by an employer, employees or by the hearing officer on his own motion, in the manner prescribed for its issuance under this Section, at any time after six months from its issuance.

2. A petition for a permanent variance must be filed with the Director in the manner prescribed by § 1492(A)(4)(a), (c) and (e).

C. The Agency shall keep an appropriately indexed record of all variances granted under this Section. The record shall be open for public inspection.

History

CAP-39-00, April 20, 2000.

Note. Reworded for purposes of statutory form.

Subchapter 11. Record Keeping

§ 1501. Employer record keeping

A. Every employer shall make, keep and preserve records and submit reports of occupational injuries and illnesses as prescribed by the Agency.

B. The Agency shall publish annually a detailed summary of the statistical data received from employers. The Agency shall make a copy of such summary available on request to any person having any interest in the report. In the preparation, publication or release of the statistical summary, the Agency summary shall not be released, revealed or otherwise disclosed to any person other than the department of the Navajo Nation designated as responsible for labor statistics, without prior permission of the employer, unless pursuant to an administrative hearing or an order of the Navajo Nation Courts.

History

CAP-39-00, April 20, 2000.

Subchapter 12. Consultation

§ 1511. Consultation services

A. For the purpose of carrying out the provisions of the Act, the Agency shall coordinate, to the greatest extent practicable, the occupational safety and health activities of all Navajo Nation and local agencies. It shall consult and cooperate with other agencies of the state, federal government, and interstate agencies, and with affected public and private organizations.

B. The Agency shall develop a consulting program, which will include visits to the workplace of employers to provide consultation and advice to such employers. Such visits:

1. May be conducted only upon request by an employer for consultation and advice on the interpretation or applicability of standards, possible alternative ways of complying with applicable standards or other matters related to accident prevention, occupational health or obligations pursuant to this Act.

2. Shall be limited to matters specified in the request.

C. If, after evaluating such request, the Director determines an alternative means of providing consultation is more appropriate and equally effective, he may provide such alternative assistance in lieu of consultation at the workplace.

D. The Director shall make recommendations regarding solutions to matters within the scope of the workplace consultation.

E. No visit pursuant to this Section is regarded as an inspection or investigation pursuant to § 1451. No citation shall be issued nor shall any civil penalty be proposed relative to the subject of the consultation upon such visit, except that nothing in this Section shall affect in any manner any provision of this Act, purpose of which is to eliminate dangerous violations.

History

CAP-39-00, April 20, 2000.

Subchapter 13. Limitation of the Act

§ 1521. Exclusion of applicability of the Act

A. Nothing in this Act shall be construed to supersede or in any manner limit the Navajo Nation Mining Safety Code, 18 N.N.C. Chapter 5, § 401 *et seq.*, or the Navajo Nation Worker's Compensation Code, 15 N.N.C. Chapter 11, § 1001 *et seq.*, or any other common law or statutory rights, duties or liabilities of employers and employees under any law with respect to injuries, occupational disease, or death of employees arising out of, or in the course of employment.

B. The Navajo Nation Occupational Safety and Health Act and regulations promulgated under it do not apply to activities of any federal agency.

History

CAP-39-00, April 20, 2000.

Subchapter 14. Political Subdivision

§ 1531. Political subdivision jurisdiction

A. Consistent with the Local Governance Act (Resolution No. CAP-34-98), any political chapter of the Navajo Nation which at any time desires to assume responsibility for development or enforcement of occupational safety and health issues with respect to which the Nation's standards or regulations has been promulgated under § 1421 and/or § 1422 shall submit to the Director a plan for

the development or enforcement of such standards and regulations.

B. The Director may approve any plan submitted under this Section, if such plan satisfies the intent of the Act, does not conflict with the requirements of the Occupational Safety and Health Act of 1970,[1] and otherwise, within the Director's discretion is found to be acceptable.

C. The Director shall periodically review any development or enforcement program approved under this Section, and shall reassume all responsibility for the development and enforcement of such occupational safety and health standards and regulations if, in the opinion of the Director, it is determined that the program of any such political subdivision does not satisfy the intent of the Act.

History

CAP-39-00, April 20, 2000.

Note. Reworded for purposes of statutory form.

Subchapter 15. Discrimination

§ 1541. Discrimination

A. No employer shall discharge or in any manner discriminate or retaliate against any employee because said employee has filed a complaint or instituted or caused to be instituted a proceeding under or related to the Act, or has testified or is about to testify in any such proceeding, or because of the exercise by said employee on behalf of himself or others of any right afforded by the Act.

B. Any employee who believes that he has been discharged or otherwise discriminated or retaliated against by the employer or his representatives in violation of this Section may, within 30 days after such alleged violation occurs, file a complaint with the Director, in writing and acknowledged by said employee, alleging such discrimination or retaliation. Upon receipt of the complaint, the Director shall initiate such investigation as it deems appropriate. Within 60 days of the receipt of a complaint filed under this Section, the Director shall notify the complaining party of his determination. If, upon such investigation, the Director determines that the provisions of this Section have been violated, he shall file a petition with the Hearing Office against such employer or his representative to enjoin the violation of Subsection (A) of this Section and for other appropriate relief to make the employee whole, including rehiring or reinstatement of the employee to his former position with back pay, interest and reinstatement of all benefits and consequential damages.

History

CAP-39-00, April 20, 2000

Note. Reworded for purposes of statutory form.

Subchapter 16. Civil Liability

§ 1551. Civil liability

Notwithstanding any contrary provisions of the Act, neither the Navajo Nation nor its authorized representatives shall be subject to civil liability for any acts or omissions which occur in the course of any inspection or investigation if the Navajo Nation or its representative is acting in a reasonable manner, considering the activity in which it is engaged.

History

CAP-39-00, April 20, 2000.

Subchapter 17. Appropriations

§ 1561. Use of civil penalty funds

Funds derived from civil penalties under § 1481 of this Act shall be available to the Agency solely for the administration and enforcement of the Act. Such funds shall be deposited into a duly established general fund account and used in accordance with the general fund account plan of operation pursuant to an approved budget. Any funds contained in said general fund account at the end of the fiscal year shall revert to the general fund but shall remain available for appropriation as provided in this Section. The Executive Director, Division of Human Resources, must first authorize any expenditure from the general fund account.

History

CAP-39-00, April 20, 2000.

Subchapter 18. Other Provisions

§ 1571. Legal representation

A. The Office of the Attorney General of the Navajo Nation may represent the Agency on any civil litigation brought under the Act.

B. In any criminal proceeding initiated under this Act, the Office of the Prosecutor, Attorney General of the Navajo Nation may represent and prosecute in the name of the Navajo Nation.

History

CAP-39-00, April 20, 2000.

§ 1572. All prior inconsistent law is repealed

A. All prior Navajo Nation safety laws, rules, regulations, and provisions of the Navajo Nation Safety Code previously adopted which are inconsistent with this Act, unless otherwise specifically excluded under § 1521 of the Act, are hereby repealed.

B. This Act supersedes the safety and health responsibilities previously given to the Navajo Occupational Safety and Health Administration and provides broad new duties and responsibilities in an attempt to meet the requirements of the federal Occupational Safety and Health Act of 1970.[1]

History

CAP-39-00, April 20, 2000.

§ 1573. Severability of the Act

If any provision of this Act or the application thereof to any person, employer, association, entity or circumstances is held invalid, such invalidity shall not affect the remaining provisions or applications of the Act.

History

CAP-39-00, April 20, 2000.

§ 1574. Effective date and amendment of the Act

A. The effective date of this Act shall be March 1, 2000 after the passage of the Act by the Navajo Nation Council and shall remain in effect until amended or repealed by the Navajo Nation Council.

B. Any amendment or repeal of the Act shall only be effective upon approval of the Navajo Nation Council, and shall not be valid if it has the effect of amending, modifying, limiting, expanding or waiving the Act for the benefit or the detriment of a particular individual.

C. Any amendment to the Act, unless expressly stated otherwise, shall become effective 60 days after the passage thereof by the Navajo Nation Council.

D. The Human Services Committee of the Navajo Nation Council will make amendments to the Navajo Nation Council from time-to-time or deemed appropriate and applicable with Navajo Nation laws.

History

CAP-39-00, April 20, 2000.

Title 16

Land

History

Note. Office of Tribal Land Administration previously codified as Chapter 1, Subchapter 3, §§ 201-204, has been deleted from this Code pursuant to Navajo Nation Attorney General's advice on Plans of Operation for Navajo Nation Divisions dated January 4, 1991.