

KENTUCKY LABOR CABINET
OCCUPATIONAL SAFETY AND HEALTH PROGRAM
FIELD OPERATIONS MANUAL
CHAPTER 7 IMMINENT DANGER

CHAPTER VII

IMMINENT DANGER

A. General.

1. Definition. 803 KAR 2:100 defines imminent danger as ". . . any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by KRS Chapter 338 "
2. Requirements. The following conditions must be met before a hazard becomes an imminent danger:
 - a. Death or serious physical harm must be threatened. Serious physical harm is impairment of the body such as to render the part of the body affected functionally useless or substantially reduced in efficiency. (See Chapter IV, B.1.b.(3)(a)1 for the complete definition and examples.)
 - b. For a health hazard there must be a reasonable expectation that toxic substances or other health hazards are present and exposure to them will cause harm to such a degree as to shorten life or cause substantial reduction in physical or mental efficiency even though the resulting harm may not manifest itself immediately.
 - c. The threat must be immediate or imminent. The required imminency would be present where it is reasonable to believe that death or serious physical harm could occur within a short time; i.e., before KY-OSH could respond through complaint, referral or programmed inspection procedures.

B. Preinspection Procedures for Handling Imminent Danger Situations.

1. When an Imminent Danger Report Is Received by the Field. Any allegation of imminent danger received by the office shall be handled in accordance with the following

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procedures:

- a. The Supervisor shall immediately determine whether there is a reasonable basis for the allegation and alert the Director and the General Counsel to the situation.
 - b. If the imminent danger allegation appears to have merit, the Supervisor shall make an evaluation of the inspection requirements and select a CSHO to conduct the inspection.
 - c. Imminent danger investigations shall be scheduled the same day that the report is received, if possible, but not later than the employer's next working day after receipt of the report.
 - d. The inspection of a workplace believed to contain an imminent danger shall be thoroughly planned and expeditiously accomplished in accordance with the procedures given in this chapter.
 - e. When an immediate inspection as required by B.1.c. cannot be made, the Supervisor or CSHO shall contact the employer immediately, obtain as many pertinent details as possible concerning the situation and attempt to have any employees affected by imminent danger voluntarily removed. A record of what steps, if any, the employer intends to initiate in order to eliminate the danger shall be attached to the case file. Such notification shall be considered advance notice and shall be handled in accordance with the procedures given in C.2.a. of this chapter and in Chapter III, C.
2. Technical Considerations. The Supervisor and the CSHO selected to perform the inspection shall review the known facts and ascertain what technical equipment and personnel may be necessary to conduct the inspection.
- a. In highly complex situations, consideration shall be given to use of specialists such as staff from Federal Regions, National Office staff, staff of the National Institute of Occupational Safety and Health and other governmental agencies, or, if the situation warrants their use, specialists from outside government. Should the decision be made to

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that an imminent danger is believed to exist and that the Secretary of Labor will be seeking a court order to restrain the employer from permitting employees to work in the area of the danger until it is eliminated.

- d. The original KY-OSH-8 Form shall be signed and posted at or near the area in which the exposed employees are working. A copy shall be signed and attached to the inspection report, KY-OSH-1 Form.
- e. Where there is not a suitable place for posting the KY-OSH-8 Form, the employer(s) shall be requested to provide a means for posting.
- f. If there is reason to believe that the employees may not see the notice, the CSHO shall orally inform the affected employees of the location of the Notice of Alleged Imminent Danger, after taking adequate precautions not to be exposed to the danger.
- g. The employer shall be advised that KRS Chapter 338.131 gives the Franklin Circuit Court jurisdiction to restrain any condition or practice which is an imminent danger to employees.

5. Reserved

D. Citations and Proposed Penalties.

1. Citations and Penalties. After an imminent danger has been found, appropriate citations and penalties shall be completed in accordance with the procedures contained in Chapters IV, V and VI. All violations discovered during the inspection shall be cited and penalties proposed, whether or not they relate to the imminent danger situation.
2. Effect of Court Action. No citation shall be issued when court action is being or will be pursued relative to the issuance of a KY-OSH-8 without prior clearance from the Director and the General Counsel.

E. Followup Inspection.

1. Court Action. Where a court has issued an injunction in

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an imminent danger situation, the followup inspection shall take place immediately after the court order has been issued to determine if the employer is complying with the terms of the order. (Other guidelines pertaining to followup inspections are set forth in Chapter III.)

2. No Court Action. Where no court proceeding has been initiated because the imminence of the danger has been voluntarily eliminated in accordance with the provisions of C.3.a.(1) but permanent correction of the condition has not been achieved at the time of the inspection, appropriate citations shall be issued promptly and a followup inspection conducted on the date set for abatement.
 3. Immediate Correction. Where the dangerous condition has been permanently corrected at the time of the inspection, the Area Director shall determine whether a followup inspection is necessary in accordance with the guidelines given in Chapter II.
- F. Removal of Imminent Danger Notice. If a KY-OSH-8 Form, Notice of Imminent Danger, has been posted at the worksite in accordance with the procedures given in C.4, the CSHO shall remove the notice as soon as the imminent danger situation has been eliminated or it has been determined that a temporary restraining order will not be sought. (See C.3.)

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use experts, the procedures given in Chapter III, B.5. shall be followed.

- b. Calibration and testing of equipment to be used shall be currently valid.
- c. If samples are required to determine whether there is an imminent danger situation, rapid analysis is essential.
 - (1) The Program Manager shall make advance arrangements with the laboratory for rapid analysis of samples from suspected imminent danger situations which require immediate action.

3. Scheduling. Any allegation of imminent danger received by the office, whether written or oral, shall be handled on a highest priority basis. Other commitments, weekends, holidays, leave and other considerations cannot interfere with the expedited and thorough handling of these cases.

- a. As indicated in B.1.a. through c, the imminent danger allegation shall be evaluated immediately and, if appropriate, scheduled for investigation as soon as possible. Except in extraordinary circumstances, the inspection shall be conducted no later than the employer's next workday after receipt of the report of imminent danger.
- b. When the time necessary to obtain special equipment or technical personnel for inspection would unduly delay the inspection, it may nevertheless be advisable to schedule and conduct a preliminary inspection within the time limits given in the preceding subparagraph. The required equipment and/or personnel can be brought in later.

C. Inspection.

- 1. Scope. Any alleged imminent danger situation brought to the attention of or discovered by the CSHO shall be inspected immediately, whether or not the inspection was initiated in response to an allegation of imminent danger. Additional inspection activity should take place only after resolution of the imminent danger situation.

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After the imminent danger situation has been resolved, a determination shall be made by the Director as to what extent the inspection should be expanded based on the guidelines found in Chapter II, F.1.b.

2. Procedures. Any inspection that involves an imminent danger situation shall be conducted as expeditiously as possible. The opportunity to accompany the CSHO shall be offered to employer and employee representatives unless the imminence of the hazard makes it impractical to delay inspection in order to afford any or all such representatives time to reach the area of the alleged imminent danger.
 - a. Advance Notice. The regulation 803 KAR 2:080 authorizes advance notice of an inspection of an apparent imminent danger situation to enable the employer to eliminate the dangerous condition as quickly as possible.
 - (1) Where an immediate inspection cannot be made, the CSHO shall give notice of the impending inspection to the employer after the known facts have been reviewed with the Supervisor and it has been concluded that advance notice would speed the elimination of the hazard.
 - (2) If advance notice is given to the employer, it shall also be given to the authorized employee representative. If the inspection is in response to a complaint, advance notice shall also be given to the complainant unless such a procedure will cause a delay in speeding the elimination of the hazard.
 - b. Refusal to Permit Inspection. If a CSHO is refused entry while attempting to investigate an alleged imminent danger complaint, a warrant shall be obtained as quickly as possible.
 - c. Preemption Question. If the report of imminent danger involves a potential dispute with another agency, the guidelines given in Chapter III, D.6.a. shall be followed.
3. Elimination of the Imminent Danger. As soon as it is concluded that conditions or practices exist which

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constitute an imminent danger, the employer shall be so advised and requested to notify his employees of the danger and remove them from the area of imminent danger. It is the duty of the CSHO at the site of an imminent danger situation to encourage the employer to do whatever is possible to eliminate the danger.

a. Voluntary Elimination of the Imminent Danger. The employer may voluntarily and permanently eliminate the imminent danger as soon as it is pointed out. In such cases, no imminent danger proceeding shall be instituted; and, therefore, no Notice of Alleged Imminent Danger shall be completed although an appropriate citation and notification of penalty shall be issued.

(1) What Constitutes Voluntary Elimination. Although there may be instances in which the employer will not be able to eliminate the danger permanently as soon as it is pointed out, the CSHO shall nevertheless consider that voluntary elimination of the danger has been accomplished when the employer:

(a) Has removed employees from the danger area; and

(b) Has given satisfactory assurance that the dangerous condition will have been eliminated before permitting employees to work in the area as evidenced by one of the following:

1 After removal of employees immediate corrective action is initiated designed to bring the dangerous condition, practice, means or method of operation or process into compliance, which, when completed, would permanently eliminate the dangerous condition; or

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- 2 The acceptable promise of the employer that:
- a Permanent corrective action will be taken as soon as possible, and
 - b Employees will not be permitted to work in the area of the imminent danger until the condition is permanently corrected; or
- 3 The acceptable promise of the employer that:
- a Permanent corrective action will be taken as soon as possible, and
 - b Where personal protective equipment can eliminate the imminent danger, such equipment will be issued and its use enforced until the condition is permanently corrected.

NOTE: A promise from an employer is acceptable only in certain limited instances in which the employer has adequately established credibility in the CSHO's professional judgment.

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(2) Action Where Voluntary Elimination Is Accomplished. If the employer agrees and proceeds to eliminate the imminent danger immediately and permanently as outlined in C.3.a.(1), the CSHO and any other technical support staff present shall advise the employer to the maximum extent possible. However, the employer is ultimately responsible for determining the manner in which the hazardous condition is to be eliminated.

(a) If elimination of the imminent danger is achieved voluntarily, the CSHO shall make the appropriate notation on the KY-OSH-1B Form. Appropriate citation(s) and notice(s) of proposed penalties shall be issued regarding the hazard. (See Chapters IV, V and VI.)

(b) The CSHO shall inform affected employees or their authorized representative(s) that, although an imminent danger had existed, the CSHO has determined that such danger no longer exists. They shall also be informed of the steps to be taken by the employer to eliminate the dangerous condition.

(c) No Notice of Alleged Imminent Danger, KY-OSH-8 Form, shall be prepared and no imminent danger proceedings instituted when voluntary elimination of the imminent danger as outlined in C.3.a. (1) is accomplished.

b. Action Where Voluntary Elimination Is Not Accomplished. If the employer either cannot or does not voluntarily eliminate the hazard as discussed in C.3.a, the following procedures shall be observed:

(1) The CSHO shall call the Supervisor, who shall decide:

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- (a) Whether to contact the General Counsel through the Director to obtain a Temporary Restraining Order (TRO) and
- (b) Whether to post the KY-OSH-8 Form, Notice of Alleged Imminent Danger.

NOTE: The CSHO has no authority either to order the closing down of the operation or to direct employees to leave the area of the imminent danger or the workplace.

- (2) If it is not feasible to contact the Supervisor, the CSHO shall contact the General Counsel through the Director and shall contact the Supervisor as soon as possible thereafter.
- (3) The Director and the General Counsel shall make immediate arrangements for the initiation of court action.
- (4) The CSHO shall give first priority in scheduling activities to preparing for litigation in imminent danger matters.

4. Issuing Notice of Alleged Imminent Danger. If the employer does not immediately eliminate the imminent danger or give satisfactory assurance that the danger will be voluntarily eliminated before any employee exposure occurs, the CSHO shall contact the Supervisor for approval to complete and post the KY-OSH-8 Form, Notice of Alleged Imminent Danger, immediately.

- a. The Supervisor shall not authorize this action without prior consultation with the General Counsel through the Director.
- b. With regard to health imminent dangers, prior consultation shall also include consultation with the health Program Manager.
- c. The Notice of Alleged Imminent Danger does not constitute a citation of alleged violation or a notice of proposed penalty. It is only a notice