

§ 95-133. Office of Director of Occupational Safety and Health; powers and duties of the Director.

(a) There is hereby created and established in the North Carolina Department of Labor a division to be known as the Occupational Safety and Health Division. The Commissioner shall appoint a Director to administer this division who shall be subject to the direction and supervision of the Commissioner. The Director shall carry out the responsibilities of the State of North Carolina as prescribed under the Occupational Safety and Health Act of 1970, and any subsequent federal laws or regulations relating to occupational safety and health, and this Article, as written, revised or amended by legislative enactment and as delegated or authorized by the Commissioner. The Commissioner shall make and promulgate such rules, amendments, or revisions in rules, as the Commissioner may deem advisable for the administration of the office. The Commissioner shall also accept and use the services, facilities, and personnel of any agency of the State or of any subdivision of State government, either as a free service or by reimbursement. The Director shall devote full time to his or her duties of office and shall not hold any other office. The Director, subject to the approval of the Commissioner, shall select a professional staff of qualified and competent employees to assist in the statewide administration of the Article. All of the employees referred to herein shall be under the classified service.

(b) Subject to the general supervision of the Commissioner and Deputy Commissioner, the Director shall be responsible for the administration and enforcement of all laws, rules and regulations which it is the duty of the Division to administer and enforce. The Director shall have the power, jurisdiction and authority to:

- (1) Uniformly superintend, enforce and administer applicable occupational safety and health laws of the State of North Carolina;
- (2) Make or cause to be made all necessary inspections, analyses and research for the purpose of seeing that all laws and rules and regulations which the office has the duty, power and authority to enforce are promptly and effectively carried out;
- (3) Make all necessary investigations, develop information and reports upon conditions of employee safety and health, and upon all matters relating to the enforcement of this Article and all lawful regulations issued thereunder;
- (4) Report to the Federal Occupational Safety and Health Administration any information which it may require;
- (5) Recommend to the Commissioner such rules, regulations, standards, or changes in rules, regulations and standards which the Director deems advisable for the prevention of accidents, occupational hazards or the prevention of industrial or occupational diseases;
- (6) Recommend to the Commissioner that he institute proceedings to remove from his or her position any employee of the Office who accepts any favor, privilege, money, object of value, or property of any kind whatsoever or who shall give prior notice of a compliance inspection of a work place unless authorized under the provisions of this Article;
- (7) Employ experts, consultants or organizations for work related to the occupational safety and health program of the Division and compensate same with the approval of the Commissioner;
- (8) Institute hearings, investigations, request the issuance of citations and propose such penalties as he may in his judgment consider necessary to carry out the provisions of this Article;
- (9) The Commissioner shall have the power and authority to issue all types of notices, citations, cease and desist orders, or any other pleading, form or notice necessary to enforce compliance with this Article as hereinafter set forth. The

Commissioner is also empowered and authorized to apply to the courts of the State having jurisdiction for orders or injunctions restraining unlawful acts and practices prohibited by this Article or not in compliance with this Article and to apply for mandatory injunctions to compel enforcement of the Article, and the Commissioner is authorized, and further authorized by and through his agents, to institute criminal actions or proceedings for such violations of the Article as are subject to criminal penalties. The Director shall recommend to the Commissioner the imposition and amount of civil penalties provided by this Article, and the Commissioner may institute such proceedings as necessary for the enforcement and payment of such civil penalties subject to such review of the Commission as hereinafter set forth.

- (10) The Director may recommend to the Commissioner that any person, firm, corporation or witness be cited for contempt or for punishment as of contempt, and the Commissioner is authorized to enter any order of contempt or as of contempt as he may deem proper and necessary, and any hearing examiner may recommend to the Commissioner that such order or citation for contempt be made.
- (11) The Commissioner or the Director, or their authorized agents, shall have the power and authority to issue subpoenas for witnesses and for the production of any and all papers and documents necessary for any hearing or other proceeding and to require the same to be served by the process officers of the State. The Commissioner and the Director may administer any and all oaths that are necessary in the enforcement of this Article and may certify as to the authenticity of all records, papers, documents and transcripts under the seal of the Department of Labor.
- (12) All orders, citations, cease and desist orders, stop orders, sanctions and contempt orders, civil penalties and the proceedings thereon shall be subject to review by the Commission as hereinafter provided, including all assessments for civil penalties.
- (13) Obtain relevant medical records. The Occupational Safety and Health Division is a health oversight agency as defined in 45 C.F.R. § 164.501, Standards for Privacy of Individually Identifiable Health Information. A covered entity, as defined by the Health Insurance Portability and Accountability Act, may disclose protected health information to health oversight agencies, including the Occupational Safety and Health Division, as necessary for law enforcement, judicial, and administrative purposes. The Commissioner or the Director, or their authorized agents, may obtain medical records of injured or deceased employees that are both directly related to the investigation being conducted and are necessary to conduct investigations and enforcement proceedings under this Article. The medical records to be obtained shall be restricted to the evaluation, diagnosis, or treatment of an employee injury or fatality. Such records shall only consist of those compiled and maintained by the Department of Health and Human Services, by hospitals participating in the statewide trauma system, or by emergency medical services providers in connection with the dispatch, response, treatment, or transport of individual patients. The medical records obtained by the Department shall be kept separate from any investigative file, shall be strictly confidential, are not public records within the meaning of G.S. 132-1, and shall not be released to any employer under investigation except as necessary to support the issuance of a citation in an OSHANC enforcement

proceeding. (1973, c. 295, s. 8; 2005-133, s. 4; 2014-76, s. 3; 2015-264, s. 29; 2021-82, s. 3.)