

HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 1

GENERAL, LEGAL, AND ADMINISTRATIVE PROVISIONS
FOR OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 50

GENERAL PROVISIONS AND DEFINITIONS

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Historical Note: Chapter 50 of title 12 is based upon chapter 101 of the Hawaii Occupational Safety and Health Standards, Rules and Regulations. [Eff 7/11/74; am 6/7/76; am 12/30/76; am 8/22/77; am 8/11/78; am 8/23/79; R 7/12/82; am 10/27/18]

§12-50-1 Application. This part contains Occupational Safety and Health Administrative rules, which apply to parts 1 through 8. Part 2 applies to all industries in all work environments, except that audiometric testing in 29 C.F.R. §1910.95 does not apply to construction work unless employees are exposed to an eight-hour time weighted average of ninety (90) dBA and above. Part 3 applies only to construction. [Eff 7/12/82; am 8/15/87; am 11/16/96; am 2/14/00; am 5/21/04; am 2/13/12; am and comp 10/27/18] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-50-2 Definitions. As used in parts 1 to 8, chapters 50 through 208:

"Accessory structure" means a structure not greater than 3,000 square feet (279m²) in floor area, and not over two stories in height, the use of which is customarily accessory to and incidental to that of the dwelling(s) and which is located on the same lot.

"Administrator" means the administrator, division of occupational safety and health, department of labor and industrial relations, State of Hawaii.

"Affected employee" means an employee affected by the grant or denial of a variance, and includes any one of the employee's designated representatives.

"Appeals board" means the Hawaii labor relations board, department of labor and industrial relations.

"Assistant secretary" means, for title 12, subtitle 8, parts 1 to 8, the director of the department of labor and industrial relations or the director's designee.

"Attorney general" means the attorney general of the State of Hawaii.

"Authorized person" means a person approved or assigned by the employer to perform a specific type of duty or to be at a specific location at the jobsite.

"Citation" means any order of the department of labor and industrial relations to correct a violation of the law, of any standard, rule, or order promulgated pursuant to the law, or of any substantive rule published in this part.

"Competent person" means one who is capable of identifying existing or predicting development of hazards in the surroundings or working conditions which are unhealthy, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate the hazards.

"Compulsory process" means the institution of any action, including ex parte application for an inspection warrant or its equivalent.

"Construction" or "construction work" means work for construction, alteration, demolition, or repair including painting and decorating, erection of new electric transmission and distribution lines and equipment, and the alteration, conversion, and improvement of the existing transmission and distribution lines and equipment.

"Department" or "DLIR" means the department of labor and industrial relations, State of Hawaii.

"Designated representative" means any individual or organization to whom an employee gives written authorization to exercise that employee's rights under parts 1, 2, 3, and 8. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

"Director" means the director of the department of labor and industrial relations or the director's designee.

"Division" means the occupational safety and health division, department of labor and industrial relations, State of Hawaii.

"Dwelling" means any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

"Dwelling unit" means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Employee" means every natural person who is required, directed, permitted, or suffered by any employer to engage in any employment, to go to work, or be at any time in any place of employment. The term can mean a former employee in the case of potential exposures to toxic materials or harmful physical agents.

"Employee of the State" means officers and employees of the department of labor and industrial relations, and persons acting in behalf of the department in an official capacity, whether temporarily or with or without compensation.

"Employer" means the State and every state agency; each county and all public and quasi-public corporations and public agencies; every person that has any natural person in service; the legal representative of any deceased employer; or every person having direction, management, control, or custody of any employment, place of employment, or any employee. Where potential exposures to toxic materials or harmful physical agents are, may have been present or are likely to be present in the future, the term applies to current employers, former employers, or successor employers.

"Employment" means the carrying on of any trade, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged to work for hire except domestic service in or about a private home.

"Establishment" means a single physical location where business is conducted or where services of industrial operations are performed; for example, a

factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.

"First aid" means any one-time treatment, and any follow-up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care; one-time treatment and a follow-up visit for the purpose of observation are considered first aid even though provided by a physician or registered professional personnel.

"Gravity of violation" means the basis for calculating the basic penalty for violations. The assessments are made on the severity of the injury or illness which could result from the alleged violation and the probability that an injury or illness could occur because of the alleged violation.

"Hawaii Revised Statutes" or "HRS" means laws enacted by the Hawaii State legislature.

"HIOSH" means the occupational safety and health division, department of labor and industrial relations, State of Hawaii.

"Infeasible" means that it is impossible to perform the work using all available means and methods or that it is technologically impossible to use safety equipment or safe practices.

"Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee of an employer; this includes any inspection conducted pursuant to a complaint filed under section 12-51-11(a) and (c), any reinspection, follow-up inspection, accident investigation, or other inspection conducted under the law.

"Law" means chapter 396, HRS, the Hawaii Occupational Safety and Health Law.

"Lost time case" means a nonfatal traumatic injury that causes any loss of time from work beyond the day or shift it occurred, or a nonfatal non-traumatic illness or disease that causes disability at any time.

"Lost workdays" means number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of the normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.

"Medical treatment" means treatment administered by a physician or by registered professional personnel under the standing orders of a physician but does not include first aid treatment even though provided by a physician or registered professional personnel.

"Nationally recognized testing laboratories" means those laboratories listed by the U.S. Department of Labor, Occupational Safety and Health Administration.

"Occupational 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.

"Order" means a command to perform a mandatory act issued by the department.

"OSHA" means, for title 12, subtitle 8, Hawaii occupational safety and health division, department of labor and industrial relations, State of Hawaii.

"OSHA's designee" means, for title 12, subtitle 8, the director of the department of labor and industrial relations or the director's designee.

"Party" means a person admitted to participate in a hearing conducted in accordance with subchapter 3 of chapter 12-53; an applicant for relief and any affected employee is entitled to be named parties; the department, represented by the attorney general, is a party without the necessity of being named.

"Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority, or instrumentality of the State or its political subdivisions.

"Personally identifiable employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees, e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.

"Place of employment" means any place, and the premises appurtenant thereto, where employment is carried on.

"Qualified" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems relating to the subject matter, the work, or the project.

"Recordable occupational injuries or illnesses" means any occupational injuries or illnesses which result in:

- (1) Fatalities, regardless of the time between the injury and death, or the length of the illness;
- (2) Lost workday cases, other than fatalities, that result in lost workdays; or
- (3) Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, medical treatment (other than first aid), loss of consciousness, or restriction of work or motion which includes any diagnosed occupational illnesses reported to the employer but are not classified as fatalities or lost workday cases.

"Residential construction" means construction work on detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures.

"Rule" means each section in the State of Hawaii Occupational Safety and Health rules and standards,

adopted under chapter 396, HRS, and includes any "rule" and "occupational safety and health standard".

"Safe and safety" as applied to an employment or place of employment means such freedom from danger to employees as the nature of the employment reasonably permits.

"Safety and health compliance officers" means occupational safety and health officers and environmental health specialists assigned within the department to inspection and enforcement duties.

"Safety device" and "safeguard" means any practicable method of mitigating or preventing a specific danger.

"Severity assessment" means an assessment assigned to a hazard to be cited according to the serious injury or illness that could reasonably be expected to result from an employee's exposure as follows:

- (1) High severity - death from injury or illness; injuries involving permanent disability; or chronic, irreversible illnesses;
- (2) Medium severity - injuries or temporary reversible illnesses resulting in hospitalization or a variable but limited period of disability;
- (3) Low severity - injuries or temporary, reversible illnesses not resulting in hospitalization and requiring only minor supportive treatment; and
- (4) Minimal severity - conditions which have a direct and immediate relationship to the safety and health of employees, the injury or illness most likely to result would probably not cause death or serious physical harm.

"Shall" means mandatory.

"Substantial" means constructed of such strength, material, design, and workmanship that the object referred to will withstand all normal wear, shock, and usage.

"Townhouse" means a single-family dwelling unit constructed in a group of three or more attached units

in which each unit extends from foundation to roof and with a yard or public way on at least two sides. [Eff 7/12/82; am 8/15/87; am 3/22/91; am 1/26/96; am 7/10/97; am 10/23/97; am 7/6/98; am 3/23/01; am 1/10/03; am 2/13/12; am and comp 10/27/18] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-50-3 Use of existing equipment. Nothing in these rules shall prevent the use of existing equipment during its lifetime, if it is safeguarded properly, maintained in good condition, and conforms to factors of safety. [Eff 7/12/82; am 8/15/87; comp 10/27/18] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-50-4 Sufficiency of safeguards. The director may require safeguards not required in these standards if a sufficient hazard exists to warrant this action. The final determination of the sufficiency of any safeguard rests with the director. [Eff 7/12/82; am 8/15/87; comp 10/27/18] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-50-5 Minimum standards. These rules establish minimum standards applying to all employment and places of employment in Hawaii as defined by chapter 396, HRS. [Eff 7/12/82; comp 10/27/18] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-50-6 Computation of time. (a) The time in which any act required by these rules is computed by excluding the first day and including the last, except for the computation of the number of days a violation continued unabated. If the last day falls on a

Saturday, Sunday, or legal holiday, it is also excluded.

(b) The number of days a violation continues to be unabated shall be computed from the day following the abatement date specified in the citation or the final order. It shall include all calendar days between that date and the date of reinspection, excluding the date of reinspection. [Eff 7/12/82; am 8/15/87; comp 10/27/18] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-50-7 REPEALED. [R 3/29/99]

§12-50-8 REPEALED. [R 3/29/99]

§12-50-9 REPEALED. [R 2/13/12]

§12-50-10 Miscellaneous (a) Personal protective equipment. Standards in this part requiring the employer to provide personal protective equipment (PPE), including respirators and other types of PPE, because of hazards to employees impose a separate compliance duty with respect to each employee covered by the requirement. The employer must provide PPE to each employee required to use the PPE, and each failure to provide PPE to an employee may be considered a separate violation.

(b) Training. Standards in this part requiring training on hazards and related matters, such as standards requiring that employees receive training or that the employer train employees, provide training to employees, or institute or implement a training program, impose a separate compliance duty with respect to each employee covered by the requirement.

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The employer must train each affected employee in the manner required by the standard, and each failure to train an employee may be considered a separate violation. [Eff 7/12/09; am and comp 10/27/18]
(Auth: HRS §396-4) (Imp: HRS §396-4)