

History: 1993 a. 242; 2005 a. 141.

Cross-reference: See also ch. SPS 363, Wis. adm. code.

101.03 Testimonial powers of secretary and deputy. The secretary or any deputy secretary may certify to official acts, and take testimony.

History: 1971 c. 228 s. 21; Stats. 1971 s. 101.03; 1977 c. 29; 1995 a. 27.

101.05 Exempt buildings and projects.

- (1) No building code adopted by the department under this chapter shall affect buildings located on research or laboratory farms of public universities or other state institutions and used primarily for housing livestock or other agricultural purposes.
- (2) A bed and breakfast establishment, as defined under s. 97.01 (1g), is not subject to building codes adopted by the department under this subchapter.
- (3) No standard, rule, code or regulation of the department under this subchapter applies to construction undertaken by the state for the purpose of renovation of the state capitol building.
- (4) No standard, rule, order, code or regulation adopted, promulgated, enforced or administered by the department under this chapter applies to a rural school building if all of the following are satisfied:
 - (a) The school building consists of one classroom.
 - (b) The school building is used as a school that is operated by and for members of a bona fide religious denomination in accordance with the teachings and beliefs of the denomination.
 - (c) The teachings and beliefs of the bona fide religious denomination that operates the school prohibit the use of certain products, devices or designs that are necessary to comply with a standard, rule, order, code or regulation adopted, promulgated, enforced or administered by the department under this chapter.
- (5) No standard, rule, order, code, or regulation adopted, promulgated, enforced, or administered by the department under s. 101.025, 101.027, 101.12, 101.121, or 101.125 to 101.135 applies to a building used for farming, as defined by the department by rule.
- (6)
 - (a) Except as provided in par. (b), no standard, rule, order, code, or regulation adopted, promulgated, enforced, or administered by the department under this chapter prevents the owner of a church from installing or operating a stairway chair lift in the church if all of the following conditions are satisfied:
 1. The church was constructed before January 1, 1919.
 2. Each floor level connected by the stairway in which the stairway chair lift is installed has at least one other stairway or other type of fire escape that affords safe egress from the floor for all occupants.
 3. The installation and operation of the stairway chair lift complies with the requirements under subch. VII and the rules promulgated by the department under subch. VII, other than requirements related to a minimum stairway width.
 - (b) If the chief of the fire department in the city, village, or town in which the church is located or, if the city, village, or town does not have a fire department, the department determines that installation or operation of a stairway chair lift under par. (a) would render any part of the church not safe, the chief or department may require the owner of the church, as a condition of installing or operating the stairway chair lift, to comply with other measures determined by the chief or department to be necessary for safety.

History: 1971 c. 329; 1983 a. 163; 1983 a. 538 s. 271; 1989 a. 31, 354; 1993 a. 27, 117; 1995 a. 27; 1999 a. 135; 2011 a. 146; 2015 a. 55; 2019 a. 91.

Cross-reference: See also ch. SPS 361, Wis. adm. code.

101.053 Recreational and educational camps.

- (1) In this section, “recreational and educational camp” means a premises, including temporary and permanent structures, that is operated as an overnight living quarters where both food and lodging or facilities for food and lodging are provided for children or adults or both children and adults for a planned program of recreation or education, and that is offered free of charge or for payment of a fee by a person or by the state or a local unit of government. “Recreational and educational camp” does not include any of the following:
 - (a) An overnight planned program of recreation or education for adults or families at an establishment holding a current retail food establishment license issued under s. 97.30 or lodging license issued under s. 97.605.
 - (b) An overnight planned program of recreation or education for fewer than 4 consecutive nights and without permanent facilities for food and lodging.
 - (c) An overnight planned program for credit at an accredited academic institution of higher education.
 - (d) A tournament, competition, visitation, recruitment, campus conference, or professional sports team training camp.
- (2) The department shall promulgate rules revising the commercial building code to establish separate standards for the construction and inspection of recreational and educational camps. The standards established in the rules shall take into account the uses, including seasonal use, that are unique to recreational and educational camps.

History: 2019 a. 130; s. 35.17 correction in (1) (b).

101.055 Public employee safety and health.

- (1) **INTENT.** It is the intent of this section to give employees of the state, of any agency and of any political subdivision of this state rights and protections relating to occupational safety and health equivalent to those granted to employees in the private sector under the occupational safety and health act of 1970 (5 USC 5108, 5314, 5315 and 7902; 15 USC 633 and 636; 18 USC 1114; 29 USC 553 and 651 to 678; 42 USC 3142-1 and 49 USC 1421).
- (2) **DEFINITIONS.** In this section, unless the context requires otherwise:
 - (a) “Agency” means an office, department, independent agency, authority, institution, association, society, or other body in state government created or authorized to be created by the constitution or any law, and includes the legislature and the courts.
 - (b) “Public employee” or “employee” means any employee of the state, of any agency or of any political subdivision of the state.
 - (c) “Public employee representative” or “employee representative” means an authorized collective bargaining agent, an employee who is a member of a workplace safety committee or any person chosen by one or more public employees to represent those employees.
 - (d) “Public employer” or “employer” means the state, any agency or any political subdivision of the state.
- (3) **STANDARDS.**
 - (a) The department shall adopt, by administrative rule, standards to protect the safety and health of public employees. The standards shall provide protection at least equal to that provided to private sector employees under standards promulgated by the federal occupational safety and health administration, but no rule may be adopted by the department which defines a substance as a “toxic substance” solely because it is listed in the latest printed edition of the national institute for occupational safety and health registry of toxic effects of chemical substances. The department shall revise the safety and health standards adopted for public employees as necessary to provide protection at least equal to that provided to private sector employees under federal occupational safety and health administration standards, except as otherwise provided in this paragraph. Notwithstanding ss. 35.93 and 227.21, if the standards adopted by the department are identical to regulations adopted by a federal agency, the standards need not be published in full in the Wisconsin administrative code and register as provided in ss. 35.93 and 227.21 if the identical federal regulations are made available to the public at a reasonable cost and promulgated in accordance with ch. 227, except s. 227.21. The department may provide to the legislative reference bureau one or more Web addresses to provide electronic access to any standards adopted under this paragraph for publication in conjunction with the publication of the Wisconsin administrative code and register under s. 35.93.
 - (b) Standards adopted by the department shall contain appropriate provisions for informing employees about hazards in the workplace, precautions to be taken and emergency treatment practices to be

used in the event of an accident or overexposure to a toxic substance. Standards shall include provisions for providing information to employees through posting, labeling or other suitable means. Where appropriate, standards adopted by the department shall contain provisions for the use of protective equipment and technological procedures to control hazards.

- (c) Standards adopted by the department relating to toxic substances or harmful physical agents, such as noise, temperature extremes and radiation, shall assure to the extent feasible that no employee will suffer material impairment of health or functional capacity through regular exposure. Where appropriate, standards adopted by the department relating to toxic substances and physical agents shall require the monitoring and measuring of employees' exposure to the substance or agent.
- (d) No standards adopted under this subsection may require a member of a volunteer or paid fire department maintained by a political subdivision of this state to complete more than 60 hours of training prior to participating in structural fire fighting.

(4) VARIANCES.

- (a) *Procedure.* A public employer may apply to the department for a temporary variance under par. (b), an experimental variance under par. (c) or a permanent variance under par. (d) to any standard adopted under sub. (3) by filing a petition with the department specifying the standard for which the public employer seeks a variance and the reasons for which the variance is sought. In addition, the public employer seeking the variance shall provide a copy of the application to the appropriate public employee representatives and post a statement at the place where notices to employees are normally posted. The posted statement shall summarize the application, specify a place where employees may examine the application and inform employees of their right to request a hearing. Upon receipt of a written request by the employer, an affected employee or a public employee representative, the department shall hold a hearing on the application for a variance and may make further investigations. If a hearing has been requested, the department may not issue a variance until a hearing has been held. A variance issued under par. (b), (c) or (d) shall prescribe the methods and conditions which the employer must adopt and maintain while the variance is in effect.
- (b) *Temporary variance.* The department may grant a temporary variance before a standard goes into effect if the public employer complies with par. (a) and establishes that it is unable to comply with a standard by the standard's effective date because of unavailability of professional or technical personnel or of necessary materials or equipment or because necessary construction or alteration of facilities cannot be completed by the effective date. The employer shall also show that it is taking all available steps to safeguard employees against the hazard covered by the standard from which the variance is sought and shall possess and describe a program for coming into compliance with the standard as quickly as possible. If a hearing is requested, the department may state in writing that noncompliance with the standard is permitted for 180 days or until a decision is made after the hearing, whichever is earlier. A temporary variance shall be in effect for the period of time needed by the employer to achieve compliance with the standard or for one year, whichever is shorter. A temporary variance may be renewed no more than twice, and only if the public employer files an application for renewal at least 90 days before expiration of the temporary variance and complies with this paragraph and par. (a).
- (c) *Experimental variance.* The department may grant an experimental variance if the public employer complies with par. (a) and the department determines that the variance is necessary to permit the employer to participate in an experiment approved by the department to demonstrate or validate new or improved techniques to safeguard the health or safety of employees.
- (d) *Permanent variance.* The department may grant a permanent variance if the public employer complies with par. (a) and the department finds the employer has demonstrated by a preponderance of the evidence that the conditions and methods the employer uses or proposes to use provide employment or a place of employment which is as safe and healthful as that provided under the standard from which the employer seeks a permanent variance. A permanent variance may be modified or revoked upon application by the employer, an affected employee, a public employee representative or the department and after opportunity for a hearing, but not sooner than 6 months after issuance of the permanent variance.

(5) INSPECTIONS.

- (a) A public employee or public employee representative who believes that a safety or health standard or variance is being violated, or that a situation exists which poses a recognized hazard likely to cause death or serious physical harm, may request the department to conduct an inspection. The department shall provide forms which may be used to make a request for an inspection. If the employee or public employee representative requesting the inspection so designates, that person's name shall not be disclosed to the employer or any other person, including any agency except the

department. If the department decides not to make an inspection, it shall notify in writing any employee or public employee representative making a written request. A decision by the department not to make an inspection in response to a request under this subsection is reviewable by the department under sub. (6) (a) 3. and is subject to judicial review under sub. (6) (a) 4.

- (b) An authorized representative of the department may enter the place of employment of a public employer at reasonable times, within reasonable limits and in a reasonable manner to determine whether that employer is complying with safety and health standards and variances adopted under subs. (3) and (4) or to investigate any situation which poses a recognized hazard likely to cause death or serious physical harm to a public employee regardless of whether a standard is being violated. No public employer may refuse to allow a representative of the department to inspect a place of employment. If an employer attempts to prevent a representative of the department from conducting an inspection, the department may obtain an inspection warrant under s. 66.0119. No notice may be given before conducting an inspection under this paragraph unless that notice is expressly authorized by the secretary or is necessary to enhance the effectiveness of the inspection.
- (c) A representative of the employer and a public employee representative shall be permitted to accompany a representative of the department on an inspection made under this subsection to aid in the inspection and to notify the inspector of any possible violation of a safety and health standard or variance or of any situation which poses a recognized hazard likely to cause death or serious physical harm to a public employee. The public employee representative accompanying the representative of the department on an inspection shall, with respect to payment received or withheld for time spent accompanying the department representative, receive treatment equal to that afforded to any representative of the employer who is present during an inspection, except that a public employer may choose to allow only one public employee representative at a time to accompany the department representative on an inspection without a reduction in pay. If a representative of the employer does not accompany the representative of the department on an inspection, at least one public employee representative shall be allowed to accompany the representative of the department on the inspection without a loss of pay. Where no public employee representative accompanies the representative of the department on an inspection, the representative of the department shall consult with a reasonable number of employees concerning matters of employee safety and health. The department shall keep a written record of the name of any person accompanying the department representative during the inspection, the name of any employee consulted and the name of any authorized collective bargaining agent notified of the inspection by the public employer under sub. (7) (e).
- (d) When making an inspection, a representative of the department may question privately any public employer or employee. No public employee shall suffer a loss in wages for time spent responding to any questions under this paragraph.
- (e) A representative of the department shall have access to the records required under sub. (7) (a) and (b) and to any other records maintained by a public employer which are related to the purpose of the inspection.

(6) ENFORCEMENT.

(a) Orders.

1. 'Issuance.' If, as a result of inspection, the department finds a violation of a safety and health standard or variance or a condition which poses a recognized hazard likely to cause death or serious physical harm to a public employee, the department shall issue an order to the employer. A public employer who is in compliance with any standards or variances is deemed to be in compliance to the extent of the condition, practice, means, method, operation or process covered by that standard. The order shall describe the nature of the violation and the period of time within which the employer shall correct the violation. The department shall send a copy of the order to the top elected official of the political subdivision of which the public employer is a part and to the appropriate collective bargaining agent for the employees affected by the violation cited in the order, if a collective bargaining agent exists. If the order is issued as a result of an inspection requested by an employee or public employee representative, the department shall also send a copy of the order to that employee or public employee representative. Upon receipt of an order, the employer shall post the order at or near the site of violation for 3 days, or until the violation is abated, whichever is longer. The order shall be posted regardless of whether there has been a petition for a variance under sub. (4) or for a hearing under subd. 3. The employer shall ensure that the order is not altered, defaced or covered by other materials.
2. 'Decision not to issue.' If the department decides not to issue an order in response to a request for inspection filed under sub. (5) (a), it shall mail written notice of that decision to the public

employee or public employee representative who requested the investigation. A decision under this subdivision is reviewable by the department under subd. 3.

3. 'Review by department.' A public employer or employee affected by an order or decision issued by the department under subd. 1. or 2. or sub. (5) (a) may obtain review of the order or decision by filing with the department a petition requesting a hearing and specifying the modification or change desired in the order or decision. A petition for a hearing must be filed with the department not later than 30 days after the order is issued or the written notification is mailed. If the department denies the request for a hearing, the denial shall be in writing and shall state the reasons for denial. If the department holds a hearing, it shall issue an order affirming, vacating or modifying the order or decision under subd. 1. or 2. or sub. (5) (a), within 30 days after the close of the hearing.
4. 'Judicial review.' Orders and denials of requests for hearings under subd. 3. are subject to judicial review under ch. 227.
- (b) *Injunction.* Whenever a hazard exists in a public employer's place of employment which could reasonably be expected to cause death or serious physical harm before other procedures under this section can be carried out, the department may seek relief through an injunction or an action for mandamus as provided in chs. 783 and 813. If the department seeks an injunction or an action for mandamus, it shall notify the affected public employer and public employees of the hazard for which relief is being sought.
- (7) EMPLOYER OBLIGATIONS FOR RECORD KEEPING AND NOTIFICATION.
 - (a) A public employer shall maintain records of work-related injuries and illnesses and shall make reports of these injuries and illnesses to the department at time intervals specified by rule of the department. These records shall be available to the department, the employer's employees and the employees' representatives. This paragraph does not authorize disclosure of patient health care records except as provided in ss. 146.82 and 146.83.
 - (b) A public employer shall maintain records of employee exposures to toxic materials and harmful physical agents which are required by safety and health standards adopted under sub. (3) to be monitored or measured. A representative of the department and any affected public employee and his or her public employee representative shall be permitted to observe the monitoring and measuring and shall have access to the employer's records of the monitoring and measuring. This paragraph does not authorize disclosure of patient health care records except as provided in ss. 146.82 and 146.83.
 - (c) A public employer shall promptly notify a public employee who has been or is being exposed to any toxic material or harmful physical agent at a level which exceeds that prescribed by the safety and health standards of the department and shall inform that public employee of any corrective action being taken.
 - (d) A public employer shall notify its employees of their protections and rights under this section by posting a summary of these protections and rights in the place of employment where notices to employees are usually posted.
 - (e) When a representative of the department enters a public employer's place of employment to make an inspection, the employer shall notify an appropriate representative of any collective bargaining unit which represents the employer's employees. The employer shall give the name of the collective bargaining unit representatives notified of the inspection to the department representative making the inspection.
- (8) PROTECTION OF PUBLIC EMPLOYEES EXERCISING THEIR RIGHTS.
 - (ag) In this subsection, "division of equal rights" means the division of equal rights in the department of workforce development acting under the authority provided in s. 106.54 (4).
 - (ar) No public employer may discharge or otherwise discriminate against any public employee it employs because the public employee filed a request with the department, instituted or caused to be instituted any action or proceeding relating to occupational safety and health matters under this section, testified or will testify in such a proceeding, reasonably refused to perform a task which represents a danger of serious injury or death or exercised any other right related to occupational safety and health which is afforded by this section.
 - (b) A public employee who believes that he or she has been discharged or otherwise discriminated against by a public employer in violation of par. (ar) may file a complaint with the division of equal rights alleging discrimination or discharge, within 30 days after the employee received knowledge of the discrimination or discharge.

- (c) Upon receipt of a complaint, the division of equal rights shall, except as provided in s. 230.45 (1m), investigate the complaint and determine whether there is probable cause to believe that a violation of par. (ar) has occurred. If the division of equal rights finds probable cause it shall attempt to resolve the complaint by conference, conciliation or persuasion. If the complaint is not resolved, the division of equal rights shall hold a hearing on the complaint within 60 days after receipt of the complaint unless both parties to the proceeding agree otherwise. Within 30 days after the close of the hearing, the division of equal rights shall issue its decision. If the division of equal rights determines that a violation of par. (ar) has occurred, it shall order appropriate relief for the employee, including restoration of the employee to his or her former position with back pay, and shall order any action necessary to ensure that no further discrimination occurs. If the division of equal rights determines that there has been no violation of par. (ar), it shall issue an order dismissing the complaint.
- (d) Orders of the division of equal rights under this subsection are subject to judicial review under ch. 227.

Cross-reference: See also ch. DWD 223, Wis. adm. code.

- (9) **COORDINATION OF STATE SAFETY AND HEALTH PROGRAMS.** The department shall coordinate state safety and health programs and shall plan and conduct comprehensive safety and health loss prevention programs for state employees and facilities.
- (10) **EXCEPTION FOR CERTAIN POLITICAL SUBDIVISIONS.** The department is not required to expend any resources to enforce this section in political subdivisions having 10 or less employees unless it has received a complaint.

History: 1981 c. 360, 391; 1985 a. 182 s. 57; 1991 a. 39; 1995 a. 27 ss. 3652 to 3659, 9130 (4); 1995 a. 342; 1997 a. 3; 1999 a. 82; 1999 a. 150 s. 672; 2003 a. 33; 2005 a. 74; 2013 a. 20.

Cross-reference: See also chs. SPS 303, 330, and 332, Wis. adm. code.

This section extends the coverage of OSHA to government employees. OSHA was meant to address tangible, measurable workplace hazards. The threat of on-the-job violence to a campus police officer is too abstract to be within the coverage afforded. The denial of a request for a hearing on a complaint seeking to require the provision of firearms to officers was proper. *West v. Department of Commerce*, 230 Wis. 2d 71, 601 N.W.2d 307 (Ct. App. 1999), 98-1693.

101.10 Storage and handling of anhydrous ammonia; theft of anhydrous ammonia and anhydrous ammonia equipment.

- (1) **DEFINITIONS.** In this section:

- (a) "Agricultural activity" means planting, cultivating, propagating, fertilizing, nurturing, producing, harvesting, or manufacturing agricultural, horticultural, viticultural, or dairy products; forest products; livestock; wildlife; poultry; bees; fish; shellfish; or any products of livestock, wildlife, poultry, bees, fish, or shellfish.
- (b) "Anhydrous ammonia equipment" means any equipment that is used in the application of anhydrous ammonia for an agricultural purpose or that is used to store, hold, transport, or transfer anhydrous ammonia.
- (c) "Transfer" means to remove from a container.

- (2) **RULES.** The department shall promulgate rules that prescribe reasonable standards relating to the safe storage and handling of anhydrous ammonia.

- (3) **PROHIBITIONS.** No person may do any of the following:

- (a) Store, hold, or transport anhydrous ammonia in a container that does not meet all applicable requirements established by rules of the department promulgated under sub. (2).
- (b) Transfer or attempt to transfer anhydrous ammonia into a container that does not meet all applicable requirements established by rules of the department promulgated under sub. (2).
- (c) Transfer or attempt to transfer anhydrous ammonia without the consent of the owner of the anhydrous ammonia.
- (d) Intentionally cause damage to anhydrous ammonia equipment without the consent of the owner of the anhydrous ammonia equipment.
- (e) Intentionally take, carry away, use, conceal, or retain possession of anhydrous ammonia belonging to another or anhydrous ammonia equipment belonging to another, without the other's consent and with intent to deprive the owner permanently of possession of the anhydrous ammonia or anhydrous ammonia equipment.

