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Municipal Technical Advisory Service

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November 26, 2003

UPDATING OCCUPATIONAL SAFETY AND HEALTH PROGRAMS

Steve Lobertini, Codification Consultant

Many Tennessee cities are receiving letters from the Tennessee Department of Labor and Workforce Development requiring them to update their occupational safety and health program plans. Cities must develop their own programs of compliance with the Tennessee Occupational Safety and Health Act of 1972 (the act), as amended, or be treated as a private employer under the act (*Tennessee Code Annotated (T.C.A.) 50-3-910(b)*). This Hot Topic presents a short review of certain provisions of the act applicable to local governments. "Private employer," as used in this publication, shall include cities that are treated as private employers under the act.

The commissioner of labor and workforce development (the commissioner), or such person designated by the commissioner as authorized under the act, may enter places of employment at reasonable times to make inspections to ensure compliance with the act (*T.C.A. 50-3-301*). If found by the commissioner not to be in compliance with any standard or regulation promulgated by the commissioner pursuant to the act, all employers, public or private, will be issued a written citation (*T.C.A. 50-3-307*). A penalty of up to \$7,000 for each day a violation exists may be assessed to private employers for failure to correct a violation within the period of correction contained in a citation (*T.C.A. 50-3-404(a)*). Private employers may be assessed a penalty of up to \$7,000 for violations determined not to be of a serious nature (*T.C.A. 50-3-405(a)*). Willful or repeated violations by a private employer may result in a penalty of up to \$70,000 for each violation (*T.C.A. 50-3-405(b)*). A private employer may also be assessed a penalty of up to \$7,000 for violation of any of the posting requirements of the act (*T.C.A. 50-3-406*). See "Posting of Notice; Availability of Act, Rules, and Safety and Health Programs," *Rules and Regulations of the State of Tennessee (Tenn. Comp. R. & Regs.) 0800-1-5-.07* (2003); and "Posting of Notice of Unsafe or Unhealthful Working Conditions," *Tenn. Comp. R. & Regs. 0800-1-5-.11* (2003).

If the commissioner has reason to believe that a condition or practice in a place of private employment could reasonably be expected to cause death or serious physical harm to an employee, the commissioner may seek injunctive relief to prevent, correct, or remove the condition or practice (*T.C.A. 50-3-401*).

Although local governments that are not treated as private employers are subject to inspections, the commissioner will not seek injunctive relief or assess penalties against them for violations (*T.C.A. 50-3-911*). The commissioner is required, however, to make an annual report to the governor and the general assembly. In this report, the commissioner may recommend legislation to correct a local government's compliance program if the commissioner has reason to believe that it is ineffective and efforts to bring the program into compliance by negotiation have failed (*T.C.A. 50-3-912*).

T.C.A. 50-3-910 requires the city's program to contain provisions for inspection and record keeping at least as effective as those provided by the act and to incorporate the standards developed by the commissioner under *T.C.A. 50-3-201*. If the commissioner determines that the city's program is less effective than that required by *T.C.A. 50-3-910*, and the city doesn't make satisfactory efforts toward achieving "at least as effective status," the commissioner will send a report to the governor to that effect.

This report will request that the governor issue an executive order to declare the local government's program null and void, and the local government will be treated as a private employer (*Tenn. Comp. R. & Regs.* 0800-1-5-.18(1)(b)(4) (2003)).

A city must provide written notification of its program to the commissioner by certified mail. The act requires the notification to include certain information about the city's program (*T.C.A.* 50-3-910(c)). If the notification is not sent to the commissioner, the city will be treated as a private employer regardless of whether it develops its own program plan (*T.C.A.* 50-3-910(d)).

Cities are required to designate or appoint an official to be responsible for the management and administration of the occupational safety and health program. The commissioner has said that in most instances the mayor should designate the responsible official (*Tenn. Comp. R. & Regs.* 0800-1-5-.06(1) (2003)). Cities must provide the commissioner with the name, business address, telephone number, and position title of the designated official and must notify the commissioner within 30 days of any change of the official (*Tenn. Comp. R. & Regs.* 0800-1-5-.06(3) (2003)).

FOR MORE INFORMATION

MTAS has drafted an ordinance to provide guidelines and procedures for an occupational safety and health program that meets the current standards under the act. If you need assistance amending your municipal code or an existing ordinance to comply with the current standards, contact Steve Lobertini, MTAS Codification Consultant, or your MTAS Municipal Management Consultant. Also, visit our Web site at www.mtas.utk.edu for further information and publications.

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