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44-636. Places of business; inspection; safety and protection of employees; orders; notice and hearing; penalty. (a) The secretary of labor shall have power to enter any factory or mill, workshop, private works, public works or state agency or institution, mercantile establishment, laundry or any other place of business where labor is or is intended to be performed for any purpose, when the same are open or in operation, for the purpose of gathering facts and statistics such as are contemplated by this act, and to examine into the methods of protection from danger to employees and the sanitary conditions in and around such buildings and places and to keep a record thereof of such inspection.

If it shall be found upon such investigation that the heating, lighting, ventilation, occupant capacity or sanitary arrangement of any such establishment or place is such as to be injurious to the health of persons employed or residing therein, or that the means of egress in case of fire or other disaster are not sufficient, or that the belting, shafting, gearing, elevators, drums, saws, cogs or machinery, in any such establishment or place are so located or are in a condition so as to be dangerous, or are not sufficiently guarded, or that the vats, pans or any other structures filled with molten metal, hot liquid or hazardous materials or substances are not surrounded with proper safeguards for preventing accidents, injury or illness to those persons in, or near them, or that the construction or condition of any building or buildings, machinery or other appurtenances in or about any place as described in this section is such as to be dangerous or injurious to the persons employed or residing therein, or that the methods of operation are such as to be unnecessarily dangerous or injurious to the persons employed or residing therein, or that any other condition which is within the control of the owner, proprietor, agent, administrator or lessee of any such building, establishment or place to be found to be dangerous or injurious to any persons employed therein or to any other person or persons, the secretary or the authorized agent of the secretary after making such inspection shall notify in writing the owner, proprietor, agent, administrator or lessee of such building, establishment, or place. Such notification may also include an order that requires the provisions of such safeguards or safety devices or the making of such alterations or additions or changes in methods of operation or the taking of any other measures the secretary may deem appropriate and necessary for the safety and protection of the employees or other persons endangered by such conditions and the amount of time granted by the secretary for making any such alterations, additions, changes or taking such other methods as required. Such amount of time shall not exceed 60 days after service of the notice and the order unless an extension thereof is requested for good cause shown by the person named in the order, and such extension is granted by the secretary.

(b) The notification required by subsection (a) shall include notice of the right to a hearing concerning any order included therein. Any such order shall become final unless within 15 days after service of the notice and order, the person or persons named therein shall request in writing a hearing by the secretary. If a request is made for a hearing the date of the hearing shall not be more than 30 days after such request is made. Orders under subsection (a), and hearings thereon, shall be subject to the provisions of the Kansas administrative procedure act.

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(c) No person, firm or corporation, nor any officer, agent or employee thereof, shall remove or require to be removed, or made ineffective any practical safeguard around or safety attachment to any machinery, vats, pan, or other apparatus or device mentioned in this section while the same is in use, except for the purpose of immediately making repairs thereto, and all safeguards or safety attachments so removed shall be promptly replaced before the dangerous machine, apparatus or device is returned to normal use or operation. Except as otherwise provided, no person shall require or permit the operation of, or operate, the dangerous machine, apparatus or device without the required safeguards or safety attachments.

(d) If the secretary of labor determines that conditions or products in any place of employment are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately, or before such danger can be eliminated through the enforcement provisions otherwise provided by law, the secretary may, in accordance with the provisions of K.S.A. [77-536](#), and amendments thereto, order the immediate taking of any steps necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct or remove such imminent danger or to prevent any avoidable loss of production facilities or product.

(e) Upon issuance of the order authorized by subsection (d) of this section and upon the request of any party who is adversely affected thereby, the secretary shall fix a place and time for a hearing to be held on such order in accordance with the provisions of the Kansas administrative procedure act.

(f) No person shall discharge or in any manner discriminate against any employee because such employee has filed a complaint with, or furnished information to, the secretary of labor concerning conditions or situations alleged to be unsafe or hazardous or otherwise covered by the provisions of this act.

(g) Any person who willfully violates any provision of this section or any lawful order issued pursuant to this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$25 nor more than \$100. Each day that such violation exists shall constitute a separate offense.

(h) An action brought pursuant to this section shall not constitute a bar to enforcement of the provisions of this section by injunction or other appropriate remedy, and upon request of the secretary of labor, the attorney general shall have the power to institute and maintain in the name of the state any and all appropriate enforcement procedures.

History: R.S. 1923, 44-636; L. 1976, ch. 370, § 46; L. 1978, ch. 191, § 1; L. 1988, ch. 356, § 143; L. 2004, ch. 179, § 45; L. 2013, ch. 44, § 4; July 1.

Source or prior law:

L. 1898, ch. 34, § 5; L. 1917, ch. 228, § 1; Revised, 1923.

Cross References to Related Sections:

Accident prevention programs, workers compensation act, inspections, see 44-5,104.

Law Review and Bar Journal References:

"Wrongful Discharge Litigation: New Opportunities for the Nineties," Stephen B. Plummer, 11 J.K.T.L.A. No. 3, 5, 6 (1987-1988).

"Tort Law: Kansas Further Limits Employment-at-Will By Providing Relief for Whistleblowers [Palmer v. Brown, 242 Kan. 893, 752 P.2d 685 (1988)]," Lisa K. Hammer, 28 W.L.J. 172, 180, 182, 184 (1988).

"Personnel Policy Manuals as Legally Enforceable Contracts: The Implied-in-Fact Contract—A Limitation on the Employer's Right to Terminate at Will," Michael D. Strong, 29 W.L.J. 368, 373 (1990).

"Comparing Kansas Employment-at-Will Law with the Model Employment Termination Act," Eric D. Barton, 41 K.L.R. 169, 170 (1992).

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"Employment Law: After-Acquired Evidence Doctrine—An Affirmative Defense for Kansas Employers to Bar Relief for Wrongful Discharge," Robert L. Shuck, 37 W.L.J. 215 (1997).

"Vengeance is not Mine: A Survey of the Law of Title VII Retaliation," Nancy Landis Caplenger and Diane S. Worth, 73 J.K.B.A. No. 4, 20 (2004).

CASE ANNOTATIONS

1. Cited; discharge of probationary employee in retaliation for reporting employer's illegal practices as actionable tort examined. *Palmer v. Brown*, 242 Kan. 893, 896, 752 P.2d 685 (1988).

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