

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter VII – Imminent Danger



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Chapter VII

Imminent Danger

A. General.

1. Definition. NCGS 95-127 (13) defines imminent danger as "any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Article."
2. Requirements. The following conditions must be met before a hazard becomes an imminent danger:
 - a. Death or serious physical harm must be threatened. Serious physical harm is impairment of the body such as to render the part of the body affected functionally useless or substantially reduced in efficiency. (See Chapter IV on violations for complete definitions and examples.)
 - b. For a health hazard there must be a reasonable expectation that toxic substances or other health hazards are present and exposure to them will cause harm to such a degree as to shorten life or cause substantial reduction in physical or mental efficiency even though the resulting harm may not manifest itself immediately.
 - c. The threat must be immediate or imminent. The required immanency would be present where it is reasonable to believe that death or serious physical harm could occur within a short time; i.e., before OSH could respond through complaint, referral or programmed inspection procedures.

B. Preinspection Procedures for Handling Imminent Danger Situations.

1. When an Imminent Danger Report Is Received. Any allegation of imminent danger received by the District Office will be handled in accordance with the following procedures:
 - a. The Bureau Chief will immediately determine whether there is a reasonable basis for the allegation and alert the Director's Office, and the AG's Office to the situation.
 - b. If the imminent danger allegation appears to have merit, the Bureau Chief and Supervisor will make an evaluation of the inspection requirements and select a CSHO to conduct the inspection.
 - c. Imminent danger investigations will be scheduled the same day that the report is received, if possible, but not later than the employer's next working day after receipt of the report.

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- d. The inspection of a workplace believed to contain an imminent danger will be thoroughly planned and expeditiously accomplished in accordance with the procedures given in this chapter.
 - e. When an immediate inspection cannot be made, the Bureau Chief or Supervisor will contact the employer immediately, obtain as many pertinent details as possible concerning the situation and attempt to have any employees affected by imminent danger voluntarily removed. A record of what steps, if any, the employer intends to initiate in order to eliminate the danger will be attached to the case file. Such notification will be considered advance notice and will be handled in accordance with the procedures given in C.2.a. of this chapter and in the Chapter III on inspection procedures.
2. Technical Considerations. The Supervisor and the CSHO selected to perform the inspection will review the known facts and ascertain what technical equipment and personnel may be necessary to conduct the inspection.
- a. In highly complex situations, consideration will be given to use of specialists from other bureaus of the Division, the staff of the National Institute of Occupational Safety and Health (NIOSH) and other governmental agencies, or, if the situation warrants their use, specialists from outside government. Should the decision be made to use experts, the procedures given in Chapter VIII on fatality investigations will be followed.
 - b. Calibration and testing of equipment to be used will be currently valid.
 - c. If samples are required to determine whether there is an imminent danger situation, rapid analysis is essential.
 - i. The Bureau Chief will make prior arrangements with local reputable laboratories for priority analysis of samples from suspected imminent danger situations that require immediate action.
3. Scheduling. Any allegation of imminent danger received by the District Office or Complaint Desk, whether written or oral, will be handled on a highest priority basis. Other commitments, weekends, holidays, leave and other considerations cannot interfere with the expedited and thorough handling of these cases.
- a. As previously indicated the imminent danger allegation will be evaluated immediately and, if appropriate, scheduled for investigation as soon as possible. Except in extraordinary circumstances, the inspection will be conducted no later than the employer's next workday after receipt of the report of imminent danger.
 - b. When the time necessary to obtain special equipment or technical personnel for inspection would unduly delay the inspection, it may nevertheless be advisable to schedule and conduct a preliminary inspection within the time limits given in the preceding subparagraph. The required equipment and/or personnel can be brought in later.

C. **Inspection.**

1. **Scope.** Any alleged imminent danger situation brought to the attention of or discovered by the CSHO will be inspected immediately, whether or not the inspection was initiated in response to an allegation of imminent danger. Additional inspection activity should take place only after resolution of the imminent danger situation. After the imminent danger situation has been resolved, a complete inspection of the establishment will be conducted in accordance with the following guidelines:
 - a. **Construction.** In the construction industries, if a substantially complete inspection of the site has been conducted within the last quarter, the procedures given in c. of this section will be followed.
 - b. **General Industry.** In an industry listed on a current assignment list, the inspection will cover all areas of the establishment. Otherwise, the procedures given in c. of this section will be followed.
 - c. **Low Hazard.** An imminent danger inspection in a low hazard industry will generally be limited to working conditions identified in the imminent danger report. If, however, the CSHO believes that the scope of the inspection should be expanded because of information indicating the likelihood of serious hazards in other portions of the plant (e.g., because the CSHO has observed them prior to the opening conference or during the investigation of the imminent danger situation or because the records review shows that an unusual number or type of injuries has occurred in one time period, area or operation) or because of a formal complaint alleging serious hazards received while conducting the imminent danger investigation, the Supervisor will be contacted. A decision will be made on the basis of information available whether the inspection should be expanded.
 - d. Any establishment covered under any exemption program (e.g. consultation or congressional appropriations) will not receive a comprehensive inspection unless the Director for good reason decides otherwise.
2. **Procedures.** Any inspection that involves an imminent danger situation will be conducted as expeditiously as possible. The opportunity to accompany the CSHO will be offered to employer and employee representatives unless the imminence of the hazard makes it impractical to delay inspection in order to afford any or all such representatives time to reach the area of the alleged imminent danger.
 - a. **Advance Notice.** NCGS 95-136 (f) (2) authorizes advance notice of an inspection when the giving of such notice is "essential to the effectiveness of such inspection." Such advance notice might enable the employer to eliminate the dangerous condition sooner than an inspection could accomplish this goal.
 - i. When an immediate inspection cannot be made, the CSHO will give notice of the impending inspection to the employer after the known facts have

been reviewed with the Director and it has been concluded that advance notice would speed the elimination of the hazard.

- ii. If advance notice is given to the employer, it will also be given to the authorized employee representative. If the inspection is in response to a NCGS 95-136 (d) complaint, information concerning the advance notice will also be given to the complainant unless such a procedure will cause a delay in speeding the elimination of the hazard.
 - b. Refusal to Permit Inspection. If a CSHO is refused entry while attempting to investigate an alleged imminent danger complaint, a warrant will be obtained as quickly as possible.
 - c. Preemption Question. If the report of imminent danger involves a potential NCGS 95-128 dispute with another agency, inspection procedures found in Chapter III will be followed.
3. Elimination of the Imminent Danger. As soon as it is concluded that conditions or practices exist which constitute an imminent danger, the employer will be so advised and requested to notify his employees of the danger and remove them from the area of imminent danger. It is the duty of the CSHO at the site of an imminent danger situation to encourage the employer to do whatever is possible to eliminate the danger.
- a. Voluntary Elimination of the Imminent Danger. The employer may voluntarily and permanently eliminate the imminent danger as soon as it is pointed out. In such cases, no imminent danger proceeding will be instituted; and, therefore, the OSHA-8, "Notice of Alleged Imminent Danger" (the "Notice"), will not be completed. Appropriate citations will be issued, however.
 - i. What Constitutes Voluntary Elimination. Although there may be instances in which the employer will not be able to eliminate the danger permanently as soon as it is pointed out, the CSHO will nevertheless consider that voluntary elimination of the danger has been accomplished when the employer:
 - A. Has removed employees from the danger area; and
 - B. Has given satisfactory assurance that the dangerous condition will be eliminated before permitting employees to work in the area as evidenced by one of the following:
 - 1. After removal of employees immediate corrective action is initiated which is designed to bring the dangerous condition, practice, means or method of operation or process into compliance, which, when completed, would permanently eliminate the dangerous condition; or
 - 2. The acceptable promise of the employer that:

- a. Permanent corrective action will be taken as soon as possible; and
 - b. Employees will not be permitted to work in the area of the imminent danger until the condition is permanently corrected; or
3. The acceptable promise of the employer that:
- a. Permanent corrective action will be taken as soon as possible, and;
 - b. Where personal protective equipment can eliminate the imminent danger, such equipment will be issued and its use enforced until the condition is permanently corrected.

Note: A promise from an employer is acceptable only in certain limited instances in which the employer has adequately established credibility in the CSHO's professional judgment.

ii.. Action Where Voluntary Elimination Is Accomplished. If the employer agrees and proceeds to eliminate the imminent danger immediately and permanently as outlined in C.3.a.1, the CSHO and any other technical support staff present will advise the employer to the maximum extent possible. However, the employer is ultimately responsible for determining the manner in which the hazardous condition is to be eliminated.

- A. If elimination of the imminent danger is achieved voluntarily, the CSHO will make the appropriate notation on the OSHA-1B Form. Appropriate citations will be issued regarding the hazard.
- B. The CSHO will inform affected employees or their authorized representative(s) that, although an imminent danger had existed, the CSHO has determined that such danger no longer exists. They will also be informed of the steps to be taken by the employer to eliminate the dangerous condition.
- C. The "Notice", will not be prepared and no imminent danger proceedings instituted when voluntary elimination of the imminent danger as outlined in C.3.a.1 is accomplished.

b. Action Where Voluntary Elimination Is Not Accomplished. If the employer either cannot or does not voluntarily eliminate the hazard as discussed in C.3.a, the following procedures will be observed:

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- i. The CSHO will call the Supervisor, who, with the Bureau Chief and Director's Office, will decide:
 - A. whether to contact the AG's Office to obtain a Temporary Restraining Order; and,
 - B. whether to post the "Notice". (See Appendix VII-A).

Note: The CSHO has no authority to order the closing down of the operation or to direct employees to leave the area of the imminent danger or the workplace.

- ii. If it is not possible to contact the Bureau Chief or the Director's Office, the CSHO will contact the AG's Office and contact the Bureau Chief and Director's Office as soon as possible thereafter.
- iii. The AG's Office will make immediate arrangements for the initiation of court action.
- iv. The CSHO will give first priority in scheduling activities to preparing for litigation in imminent danger matters.

- 4. Issuing Notice of Alleged Imminent Danger. If the employer does not immediately eliminate the imminent danger or give satisfactory assurance that the danger will be voluntarily eliminated before any employee exposure occurs, the CSHO will contact the Director's Office for approval to complete and post the "Notice" immediately. The "Notice" does not constitute a citation of alleged violation or a notice of proposed penalty. It is only a notice that an imminent danger is believed to exist and that the Commissioner will be seeking a court order to restrain the employer from permitting employees to work in the area of the danger until it is eliminated. The AG's Office will be alerted to the posting of the "Notice" in case legal proceedings must be initiated.

- a. The original "Notice" will be signed and posted at or near the area in which the exposed employees are working. A copy will be signed and attached to the inspection report.
- b. Where there is not a suitable place for posting the "Notice", the employer(s) will be requested to provide a means for posting.
- c. If there is reason to believe that the employees may not see the "Notice", the CSHO will orally inform the affected employees of the location of the "Notice", after taking adequate precautions not to be exposed to the danger.
- d. The employer will be advised that NCGS 95-140 gives the North Carolina Superior Courts jurisdiction to restrain any condition or practice which is an imminent danger to employees.

D. Citations and Proposed Penalties.

1. Citations and Penalties. After an imminent danger has been found, appropriate citations and penalties will be completed in accordance with the procedures contained in Chapters IV and VI on violations and penalties. All violations discovered during the inspection (e.g., “plain view”) will be cited and penalties proposed, whether or not they relate to the imminent danger situation.
2. Effect of Court Action. No citation will be issued when court action is being or will be pursued relative to the issuance of the “Notice” without prior clearance from the Bureau Chief.

E. Follow-up Inspection.

1. Court Action. Where a court has issued an injunction in an imminent danger situation, the follow-up inspection will take place immediately after the court order has been issued to determine if the employer is complying with the terms of the order. (Other guidelines pertaining to follow-up inspections are set forth in the Chapter III on inspection procedures.)
2. No Court Action. Where no court proceeding has been initiated because the imminence of the danger has been voluntarily eliminated in accordance with the provisions of C.3.a.(1) but permanent correction of the condition has not been achieved at the time of the inspection, appropriate citations will be issued promptly and a follow-up inspection conducted on the date set for abatement.
3. Immediate Correction. Where the dangerous condition has been permanently corrected at the time of the inspection, the Bureau Chief should determine whether a follow-up inspection is necessary in accordance with division guidelines.

- F. Removal of Imminent Danger Notice.** If the “Notice” has been posted at the worksite in accordance with the procedures given in C.4, the CSHO will remove the notice as soon as the imminent danger situation has been eliminated or it has been determined that a temporary restraining order will not be sought.

The Quality Records for the requirements identified in this chapter are contained in the inspection case file. The documentation can be found within the case file in one of the following locations: case file checklist, case file summary, OSHA-1, OSHA-1A, OSHA-1B, OSHA-7, OSHA-8, OSHA-90, narrative, anticipatory warrant request, anticipatory warrant, witness statement form, photo record pages, miscellaneous correspondence and/or documents (e.g., correspondence with the AG’s Office, notes to the file from the Bureau Chief or Supervisor, etc.)