

# Department of Energy



## Workers' Rights



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# Department of Energy

## Workers' Rights



**Office of Environment, Health, Safety and  
Security**

March 2015

# Contents

<i>Introduction</i> .....	1
<i>Worker Safety and Health Program</i> .....	1
<i>Who Does 851 Cover</i> .....	2
<i>Contractor Responsibilities</i> .....	2
<i>Worker Rights and Responsibilities</i> .....	4
<i>Right to a Safe and Healthful Workplace</i> .....	6
Employers’ “General Duty” .....	6
Health and Safety Standards: Protection on the Job .....	6
Right to be Provided Protective Equipment Free of Charge .....	7
Right to Information .....	7
Right to Know about Chemical Hazards .....	8
<i>Right to Know about Laws and Your Rights</i> .....	8
Right to Get Copies of Workplace Injury and Illness Records .....	9
Right to Exposure Data .....	9
Right to Your Medical Records .....	10
<i>Enforcement</i> .....	10
<i>Department of Energy: Employee Rights Regulations</i> .....	11
<i>Additional Information:</i> .....	13
<i>Contacts:</i> .....	13
Office of Environment, Health, Safety and Security: .....	13
NOTES: .....	14

## *Introduction*

### **Worker Protection is the Law**

You have the right to a safe workplace. The Department of Energy (DOE) Worker Safety and Health Program Rule (10 CFR 851) was developed as a result of amendments made to the Atomic Energy Act. Its purpose is to prevent workers from being killed or otherwise harmed at work.

The 10 CFR 851 rule (Rule) requires DOE contractors to provide their employees with working conditions that are free of known dangers. The Rule is a lot like OSHA's rules which applies to the rest of the country. In fact, 10 CFR 851 requires the use of OSHA workplace safety and health standards. DOE's Office of Environment, Health, Safety, and Security (AU) is the Office responsible for the Rule, and provides information, training and assistance to employers and workers.

Contact us if you have questions or want to file a complaint. We will keep your information confidential.

**We are here to help you!**

## *Worker Safety and Health Program*

**A job must be safe or it cannot be called a good job.**

DOE strives to make sure that every worker goes home unharmed at the end of the workday - the most important right of all.

10 CFR 851, *Worker Safety and Health Program*, requires contractors to establish:

- A worker safety and health program that reduces or prevents occupational injuries, illnesses, and accidental losses by providing workers with safe and healthful workplaces at DOE sites; and
- Procedures for investigating whether a violation of the Rule has occurred, determining the nature and extent of any violation, and for imposing an appropriate remedy.

## **Who Does 851 Cover**

The 851 rule covers all DOE contractors including sub-contractors performing work on a DOE site. Federal workers are not covered by 851; however, they are covered under DOE Order 440.1B, *Worker Protection Program for DOE Federal Employees*. A small number of DOE organizations were not established under the Atomic Energy Act, and are therefore not covered by 851; rather, they are covered by OSHA and DOE directives. You can see a list of DOE facilities under OSHA jurisdiction on the web at:

<http://www.gpo.gov/fdsys/pkg/FR-2006-06-29/pdf/06-5789.pdf>

## **Contractor Responsibilities**

DOE contractors are responsible for providing a safe workplace. Contractors **MUST** provide their employees with a workplace that does not have serious hazards and must follow all Rule requirements, including OSHA requirements, as well as additional standards that DOE feels are necessary to protect workers against hazards on their sites.

Contractors must find and correct safety and health problems. Contractors should first try to eliminate or reduce hazards by making feasible changes in working conditions, such as switching to safer chemicals, enclosing processes to trap harmful chemicals, or using ventilation systems to clean the air. These are examples of effective ways to eliminate or minimize risk, rather than simply relying on personal protective equipment such as masks, gloves, or earplugs.

Contractors must also:

- Inform employees about hazards through training, labels, alarms, color-coded systems, chemical information sheets and other methods.
- Train employees in a language and vocabulary they can understand.
- Keep accurate records of work-related injuries and illnesses.
- Perform tests in the workplace, such as air sampling.
- Provide hearing exams or other medical tests required by 851 standards.
- Post OSHA citations and the annual summary of injury and illness data where workers can see them.
- Notify DOE within two hours of a workplace fatality, all in-patient hospitalizations, amputations, or losses of an eye.
- Prominently display the official worker safety and health poster that describes rights and responsibilities under 10 CFR 851.

Additionally contractors must:

- Establish written policy, goals, and objectives for the worker safety and health program;
- Use qualified worker safety and health staff (e.g., a certified industrial hygienist or safety professional), to direct and manage the program;
- Provide mechanisms to involve workers and their elected representatives in the development of the worker safety

and health program goals, objectives, and performance measures and in the identification and control of hazards in the workplace;

- Provide workers with access to information relevant to the worker safety and health program;
- Establish procedures for workers to report without reprisal job-related fatalities, injuries, illnesses, incidents, and hazards, and make recommendations about appropriate ways to control those hazards;
- Provide for prompt response to such reports and recommendations;
- Provide for regular communication with workers about workplace safety and health matters including their role in identifying potential hazards and reporting of all injuries; and
- Establish procedures to permit workers to stop work or decline to perform an assigned task because of a reasonable belief that the task poses an imminent risk of death, serious physical harm, or other serious hazard to workers when the workers believes there is insufficient time to utilize normal procedures.

## *Worker Rights and Responsibilities*

In addition to DOE contractor responsibilities, workers also have Rights and Responsibilities under 851. Workers must comply with the requirements of the Rule which are applicable to their own work and conduct, including the worker safety and health program.

Workers have the right, without reprisal, to:

- Participate in safety and health activities on official time;
- Have access to:
  - DOE safety and health publications;



- The worker safety and health program for the covered workplace;
- The standards, controls, and procedures;
- Limited information on any DOE recordkeeping log (e.g., OSHA Form 300). Access is subject to Privacy Act and Freedom of Information Act requirements and restrictions; and
- The DOE Form 5484.3 (the DOE equivalent to OSHA Form 301) that contains the employee's name as the injured or ill worker;
- Be notified when monitoring results indicate the worker was overexposed to hazardous materials;
- Observe monitoring or measuring of hazardous agents and have the results of their own exposure monitoring;
- Have a representative authorized by employees accompany the Director or his authorized personnel during the physical inspection of the workplace for the purpose of aiding the inspection. When no authorized employee representative is available, the Director or his authorized representative must consult, as appropriate, with employees on matters of worker safety and health;
- Request and receive results of inspections and accident investigations;
- Express concerns related to worker safety and health;
- Decline to perform an assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious physical harm to the worker coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures; and
- Stop work when the worker discovers employee exposures to imminently dangerous conditions or other serious hazards, provided that any stop work authority must be exercised in a justifiable and responsible manner in accordance with procedures established in the approved worker safety and health program.

# *Right to a Safe and Healthful*

## *Workplace*

### **Employers' "General Duty"**

Employers have the responsibility to provide a safe and healthful workplace that is free from serious recognized hazards. This is commonly known as the General Duty Clause.

### **Health and Safety Standards: Protection on the Job**

851 includes a number of standards that describe the methods that contractors must use to protect their employees from hazards. Examples of these standards include: OSHA standards (General Industry and Construction), ANSI standards, and NFPA standards. These standards are designed to protect workers from a wide range of hazards. They also limit the amount of hazardous chemicals, substances, or noise that workers can be exposed to; require the use of certain safe work practices and equipment; and require employers to monitor certain hazards and keep records of workplace injuries and illnesses.

Below are several examples of requirements included in 851 standards:

- Provide fall protection, such as a safety harness and lifeline;
- Prevent trenching cave-ins;
- Ensure the safety of workers who enter confined spaces such as manholes or grain bins;
- Prevent exposure to high levels of noise that can damage hearing;
- Put guards on machines;

- Prevent exposure to harmful levels of substances like asbestos and lead;
- Provide workers with respirators and other needed safety equipment;
- Provide healthcare workers with needles and sharp instruments that have built-in safety features to prevent skin punctures or cuts that could cause exposure to infectious diseases; and
- Train workers using a language and vocabulary they understand about hazards and how to protect themselves.

Contractors must also comply with the General Duty Clause. This clause requires workplaces to be free of serious recognized hazards and may be cited when no specific 851 standard applies to the hazard.

## **Right to be Provided Protective Equipment Free of Charge**

In some situations it is not possible to completely eliminate a hazard or reduce exposures to a safe level, so respirators, goggles, earplugs, gloves, or other types of personal protective equipment are often used by themselves or in addition to other hazard control measures. Contractors must provide protective equipment free of charge. Contractors are responsible for knowing when protective equipment is needed.

## **Right to Information**

851 provides workers and their representatives the right to see information that must be collected on hazards in the workplace. Workers have the right to know what hazards are present in the workplace and how to protect themselves. Many 851 standards require various methods that employers must be used to inform employees, such as warning signs, color-coding, signals, and training. Workers

must receive their normal rate of pay to attend training that is required by 851 standards and rules. The training must be in a language and vocabulary that workers can understand.

## **Right to Know about Chemical Hazards**

The Hazard Communication standard, known as the “right-to-know” standard, requires contractors to inform and train workers about hazardous chemicals and substances in the workplace.

Contractors must:

- Provide workers with effective information and training on hazardous chemicals in their work area. This training must be in a language and vocabulary that workers can understand;
- Keep a current list of hazardous chemicals that are in the workplace;
- Make sure that hazardous chemical containers are properly labeled with the identity of the hazardous chemical and appropriate hazard warnings; and
- Have and make available to workers and their representatives Safety Data Sheets (SDS) for each substance that provide detailed information about chemical hazards, their health effects, how to prevent exposure, and emergency treatment if an exposure occurs.

## **Right to Know about Laws and Your Rights**

Contractors must display the official Worker Safety and Health Poster, *Job Safety and Health: It's the Law*, in a place where workers will see it. This poster is available in both English and Spanish it can be downloaded from the 851 website:

*(English Poster)*

<http://energy.gov/sites/prod/files/2014/08/f18/Job%20Safety%20%26%20Health%20Poster%2008052014%20Rev%201.pdf>

*(Spanish Poster)*

<http://energy.gov/sites/prod/files/2014/09/f18/Job%20Safety%20%26%20Health%20Poster%20Spanish%2009042014.pdf>

## **Right to Get Copies of Workplace Injury and Illness Records**

DOE's Recordkeeping Order requires contractors to keep accurate and complete records of work-related injuries and illnesses.

Contractors must record work-related injuries and illnesses on the OSHA Log (Form 300). A one-line notation is made on the Log for each case that requires medical treatment other than first aid, restricted work or days away from work during the calendar year. Separate reports providing a more detailed description of cases included on the Log are prepared using the DOE equivalent of the OSHA Form 301.

Each year from February 1 through April 30, employers must post a summary of the injury and illness information from the previous year. The OSHA Form 300A is used to summarize the information and must be posted in a place where workers can see it.

Workers and their representatives have the right to receive copies of any OSHA 301 Form or equivalent form that contains the employee as the injured or ill employee. Limitations included in the Privacy Act and Freedom of Information Act prohibits access to the full OSHA Log. Employees have a right to view all information on the Log

relating to any case where their name is listed as the injured or ill employee. Access to information for other cases listed on the Log is restricted to information that does not identify the injured or ill employee. Following a request, employers must make copies available at the end of the next business day.

## **Right to Exposure Data**

Many 851 standards require contractors to run tests of the workplace environment to find out if their workers are being exposed to harmful levels of hazardous substances such as lead or asbestos, or high levels of noise or radiation. These types of tests are called exposure monitoring. 851 gives workers the right to get the results of these tests.

## **Right to Your Medical Records**

Some 851 standards require medical tests to find out if a worker's health has been affected because of exposures at work. For example, employers must test for hearing loss in workers exposed to excessive noise or for decreased lung function in workers exposed to asbestos. Workers have a right to their medical records. Workers' representatives also have a right to review these records but they must first get written permission from the worker to gain access to their medical information.

## **Enforcement**

The DOE Office of Enforcement and Oversight implements the Department's congressionally mandated worker safety and health enforcement program in accordance with 10 CFR 851. The enforcement program is designed to promote and protect worker safety and health and ensure DOE contractor compliance with Part 851. Under the Rule, any contractor

worker or worker representative has the right to request an investigation or inspection of their DOE workplace for potential 851 violations. However, DOE encourages workers to use local problem reporting and employee concerns processes to the extent possible to address workplace hazards.

For more information about the DOE Part 851 enforcement program, please consult:

<http://energy.gov/ea/services/enforcement>

## ***Department of Energy: Employee Rights Regulations***

In addition to the 851 rule there are a number of Rules as well as DOE Directives that provide employee Rights and Protections. The Department of Energy (DOE) has compiled a list of existing rules (see below) that directly pertain to DOE employees and DOE contractors. These laws describe the appropriate protections and guidelines for employees raising protected concerns. The Department is committed to maintaining a safe, healthy, and transparent work environment by raising greater awareness of the existing employee protection programs. The list below is a summary of existing worker protection rules. If you are reading this pamphlet electronically obtain more information by clicking on the titles and link to the web to see the full text of each regulation or you can visit the Office of General Counsel's web site at:

<http://energy.gov/gc/departments-energy-safety-and-employee-protection-authorities>

- **42 U.S.C. § 5851: Employee Protection**
- **10 C.F.R. 708: DOE Contractor Employee Protection Program**
- **10 C.F.R. 851: Worker Safety and Health Program**
- **29 C.F.R. 1960.28: Employee Reports of Unsafe or Unhealthful Working Conditions**
- **48 C.F.R. 970.0309: Whistleblower Protection of Contractor Employees**
- **29 C.F.R. Part 24: Procedures for the Handling of Retaliation Complaints under Federal Employee Protection Statutes**
- **10 C.F.R. 820: Procedural Rules for DOE Nuclear Activities**
- **Department of Energy Acquisition Regulation (DEAR) Subpart 903.9: Whistleblower Protections for Contractor Employees**
- **American Reinvestment and Recovery Act § 1553: Protecting State and Local Government and Contractor Whistleblowers**
- **National Defense Authorization Act for Fiscal Year 2000 § 3164: Whistleblower Protection Program**
- **DOE Order 442.1 A: Department of Energy Employee Concerns Program**
- **DOE Order 440.1 B: Worker Protection Program for DOE (Including NNSA) Federal Employees**
- **DOE Order 442 1-1 Differing Professional Opinions Manual for Technical Issues Involving Environment, Safety, and Health**



## ***Additional Information:***

For more information on this topic you can write or call the Office of Environment, Health, Safety and Security's Office of Health and Safety at:

Office of Health and Safety  
U.S. Department of Energy  
1000 Independence Avenue  
AU-10/GTN  
Washington, D.C. 20585-3445

Phone: 301-903-6061

## ***Contacts:***

### **Office of Health Safety and Security:**

Office of Health and Safety	301-903-6061
Office of Enforcement	301-903-0081

### **Office of Hearings and Appeals:**

(DOE Switchboard)	202-586-5000
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### **Office of the General Counsel:**

Office of General Law (GC-77)	202-586-5281
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## NOTES:

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## NOTES:

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If you think your job is unsafe and you have questions,

We Can Help

It's confidential