

# PUBLIC SECTOR WORKER HEALTH AND SAFETY

*What are your Rights?*



**Slide 1**

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**MC1**

MassCOSH, 1/3/2019

## Mass. Gen. Laws c149 § 6 ½

Public employers shall provide public employees with at least the level of protection provided under the federal Occupational Safety and Health Act (February 1, 2019)

- Standards
- Regulations
- General Duty Clause

Enforcement by Mass. Dept. of Labor Standards

# OSHA 101

Occupational Safety and Health Act, 29 United States Sec. 651 et seq.

Regulations: 29 Code of Federal Regulations sec. 1900 et seq.

# OSHA 101

## Major provisions of statute:

- General Duty Clause
- Authorization for OSHA to conduct inspections and investigations
- Requirement for employers' record keeping
- Authority for OSHA to issue citations and penalties for violations of OSH Act

# OSHA 101

## Major provisions of statute (cont'd):

- Establishment of Occupational Safety & Health Review Commission
- US District Courts have jurisdiction to issue temporary restraining orders or injunctions in cases of imminent danger
- Establishment of National Institute of Occupational Safety and Health
- OSHA has authority to promulgate regulations

# OSHA Regulations – 29 CFR 1900 et seq.

1904	Recording and Reporting Occupational Injuries
1910.1450	Occupational Exposure to Hazardous Chemicals in Labs
1910.95	Noise
1910.141	Sanitation
1910.1000	Air Contaminants
1910.1001	Asbestos
1910.1030	Bloodborne Pathogens
1910.1200	Hazard Communication

# What will c149 § 6 ½ change for ALL MTA members?

- Potential application of General Duty Clause to:
  - Violence
  - IAQ
  - Temperature/Humidity
  - Ergonomics
  - Building Trades' Requirements
  
- Bloodborne pathogens requirements
- Application to custodial/maintenance workers (fall protection, lockout/tagout, etc.)
- Lab safety requirements (chemical hygiene plan)
- Right of employees to file complaint with DLS / DLS inspections
- No retaliation provisions



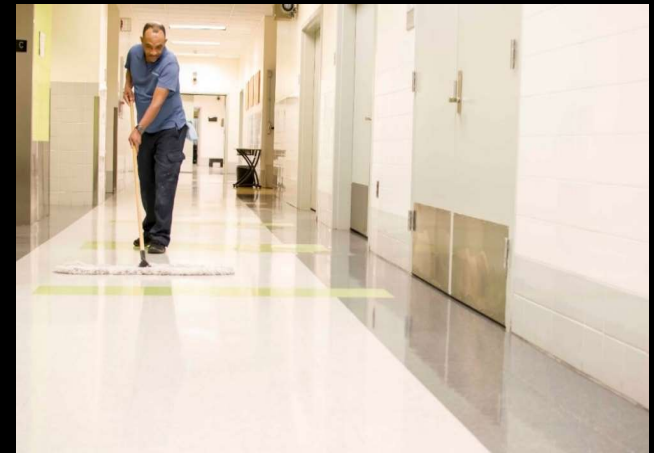
# Mass. Department of Labor Standards

- 1. Regulations on workplace safety**
- 2. Enforcement – inspections**
- 3. Tracking workplace accidents**
- 4. Training**



# Employer Responsibilities

- Furnish employment and a place of employment **free** from recognized **hazards** that are causing or are likely to cause death or serious physical harm.
- Provide and ensure (maintain) use of **safe** tools and equipment.
- Warn workers of potential hazards via **posters**, labels or signs.
- Establish and update "Operating Procedures"



# Employer Responsibilities

## TRAINING WORKERS

- To recognize, abate (minimize) and prevent safety and health hazards.
- When you start a job, and when new equipment or chemicals are provided to perform your job.
- Explain hazards of chemicals used and how to work safely with them.

# Employer Responsibilities

## MEDICAL SCREENING & RECORDKEEPING

- Medical examinations and training when required by OSHA standards  
Ex: medical evaluation after bloodborne pathogen exposure incident
- Access to employee medical and exposure records
- Maintaining OSHA 300 log, if requested by DLS



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
DEPARTMENT OF LABOR STANDARDS



## Massachusetts Workplace Safety and Health Protection for Public Employees

Massachusetts General Law Chapter 149, §§ 6 and 6-1/2 provide job safety and health protection for state, municipal and county workers through the promotion of safe and healthful work conditions. In addition, 454 CMR 25 directly extends OSHA regulations to executive branch state agencies.

- Employers:** Employers are required to provide procedures, equipment and training to prevent work-related injuries and illnesses.
- Employees:** Employees are required to comply with the policies and procedures established in their workplace to reduce work-related injuries and illnesses.
- Inspection:** The Department of Labor Standards ("DLS") may conduct an on-site inspection to evaluate workplace conditions and make recommendations for the prevention of work-related injuries and illnesses. See "Inspection Summary" at [www.mass.gov/dols/wshp](http://www.mass.gov/dols/wshp).
- Enforcement:** DLS may issue a Written Warning which contains an Order to Correct when an inspection reveals a condition which could cause a work-related injury or illness. DLS may issue a Civil Citation with Civil Penalty in circumstances when the employer repeatedly allows an unsafe condition to occur, the condition has already caused a serious work-related injury, or if the employer has ignored a previous Written Warning.
- Voluntary Assistance:** Public sector workplaces may request technical assistance by contacting DLS at 508-616-0461 or [safepublicworkplace@state.ma.us](mailto:safepublicworkplace@state.ma.us). There are no written warnings or penalties issued for voluntary assistance.
- Complaints:** Public employees or their representatives may file a complaint about safety and health conditions at their workplace by contacting DLS at 508-616-0461 or [safepublicworkplace@state.ma.us](mailto:safepublicworkplace@state.ma.us).
- Safety and Health Management:** Sample safety programs and technical bulletins are available at [www.mass.gov/dols/wshp](http://www.mass.gov/dols/wshp).

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508-616-0461

Rev. 3-15

# OSHA/DLS - General Duty Clause

29 United States Code sec. 654

(a) Each employer –

(1) shall furnish to each of his employees, employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his/her/their employees;

(2) shall comply with the occupational safety and health standards promulgated under this Act.

# OSHA/DLS - General Duty Clause

29 United States Code sec. 654

(b) Each employee -

shall comply with the occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his/her/their own actions and conduct.

# Elements Necessary to Establish a Violation of the General Duty Clause:

1. The employer failed to keep the workplace free of the hazard(s) to which employees were exposed
2. The hazard is recognized by the employer, employer's industry, or common sense
3. The hazard is causing or likely to cause death or serious physical harm
4. There is a feasible and effective method to correct the hazard



# Hazards in your Locals?

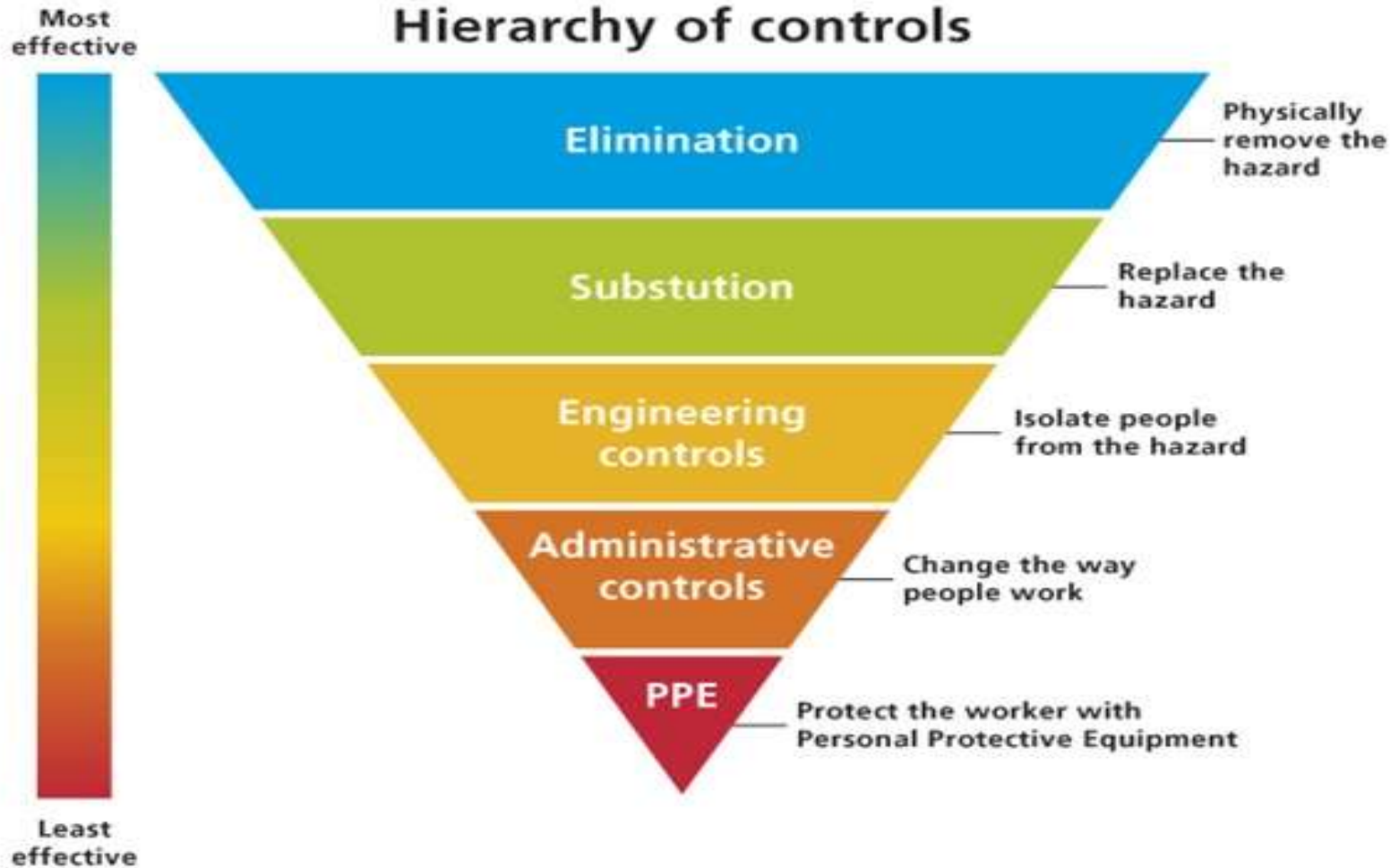
*What type(s) of concerns or complaints are you experiencing in the field?*



Types of Hazards:

- Physical
- Violence
- Environmental
- Biological
- Chemical
- Fire / Electrical / Radiation

# Hierarchy of controls



# Workplace Violence

What is workplace violence?

“Violence or threat of violence against workers”

- Verbal – "assault"
- Physical – "battery"



# Workplace Violence

## **Who is the most vulnerable?**

One-on-one aides

Classroom aides

Bus monitors

Employees who work alone or in small groups

Teachers (Especially SPED)

# Workplace Violence

What does OSHA/DLS recommend that employers do?

Written Policies

Safety Education & Training

Secure the Workplace

Engineering Solutions

Organizational Changes

Personal Protective  
Equipment

Administrative Solutions

## Workplace Violence – What protections can OSHA/DLS offer?

They can investigate the incident and cite the employer if the following criteria are met:

1. Were employees exposed to a foreseeable, hazardous condition that involved violence in the workplace ?
2. Is there evidence that the employer was aware of the violence hazard in the workplace because the hazard was recognized previously, is recognized in the industry or recognizing the hazard makes common sense ?

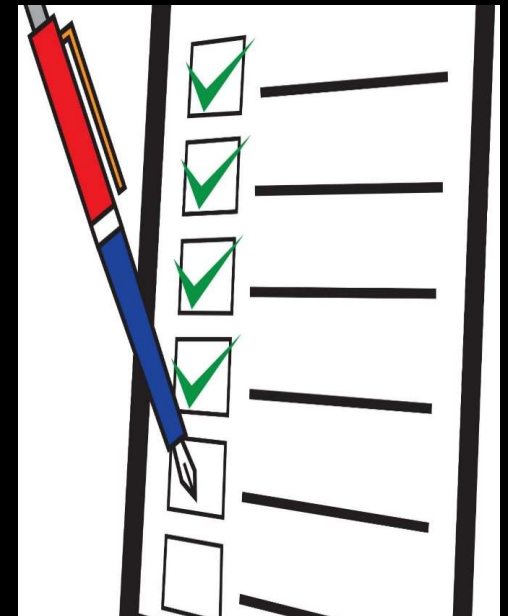
## Workplace Violence – What protections can OSHA/DLS offer?

3. Did the hazard cause or was it likely to cause death or serious physical harm? If an incident occurred, did the impairment to the body usually require medical treatment?
4. Are there means of abatement for the employer to eliminate or materially reduce the likelihood of the hazard occurring?
5. OSHA Instruction CPL 02-01-058

# Workplace Violence

Employer duties after a violent incident:

- ✓ Record & maintain a record of the incident
- ✓ Maintain the medical records
- ✓ Identify employees who may be exposed to violence
- ✓ Provide said employees with relevant information & training
- ✓ Implement feasible policies, practices & controls to eliminate the hazard





# Agitated Student Behavior

## Evaluate your schools:

*“Aggressive behavior against staff is a large pattern of injury across the state”*

- Injury Pattern
- Which employees get hurt?
- Why did student act out? (Root cause vs blame)
- What process is in place to prevent agitation?
- What process is available to de-escalate?
- What training did staff receive?
- Was the training effective?

# Agitated Student Behavior

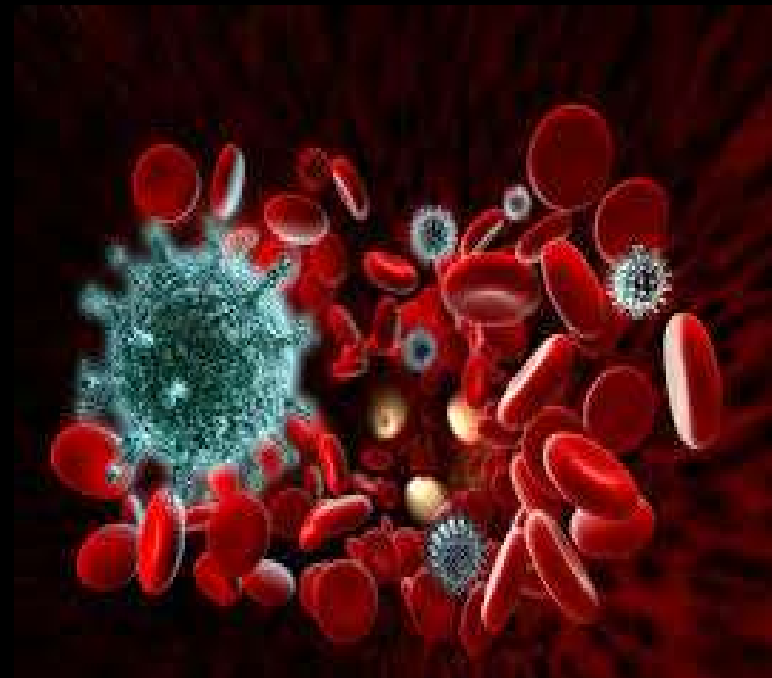
The DLS looks for:

- ✓ Written program to provide staff safety
- ✓ Facility design
- ✓ Practices and procedures
- ✓ Training attendance logs for staff (teachers, ESPs, other)
- ✓ Training topics : multiple approaches – *classroom management, de-escalation, restraint reduction, types of trauma / developmental delay, etc.*
- ✓ Training frequency: more than once

# Bloodborne Pathogens – OSHA's Standard

## What Are Bloodborne Pathogens?

- Infectious microorganisms in blood that can cause disease in humans
- They include:
  - ✓ Hepatitis B Virus
  - ✓ Hepatitis C Virus
  - ✓ Human Immunodeficiency Virus (HIV)
  - ✓ And many others



# Bloodborne Pathogens

## How can you be EXPOSED?

- Administering first aid
- Personal Care (Toileting)
- Post-accident cleanup
- Improper handling of infected waste
- Being bitten, etc. (Skin break)
- Laboratory Work (HS & HE)
- Janitorial or maintenance work



# Bloodborne Pathogens

What body tissue/fluids can contain Bloodborne Pathogens?

- ✓ Skin Tissue
- ✓ Blood
- ✓ Saliva / Mucous
- ✓ Vomit
- ✓ Feces
- ✓ Urine
- ✓ Any other “Potentially Infectious Materials” (OPIM)\*



# Bloodborne Pathogens - Quiz

If exposed at work, which body tissue/fluids would probably result in an investigation by DLS??

Skin Tissue No!

Feces No!

Urine No!

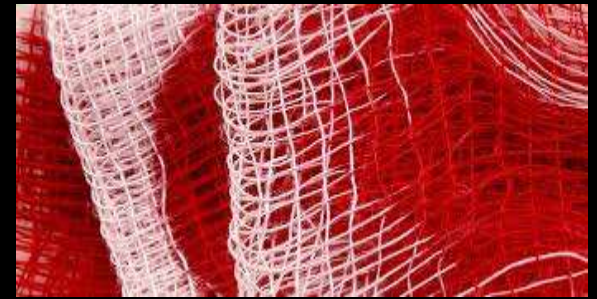
Vomit No!

Saliva / Mucus No!

Any other bodily fluid No!

Blood **YES!!**

**Blood/OPIM\*** exposure  
MUST be obvious!!



# Complying with the OSHA/DLS Bloodborne Standard

Employers **MUST**:

- Establish an exposure control plan & update the plan annually
- Prepare an Exposure Determination (identifies all/any employees whose job classification/task has the potential for occupational exposure)
- Provide information & training to employees
- Implement the use of universal precautions\*
- Provide personal protective equipment (PPE – gloves, masks, etc.)
- Make available hepatitis B vaccinations to all w/ occupational exposure

# Complying with the OSHA/DLS Bloodborne Standard

## Employers **MUST**:

- Maintain worker medical & training records
- Use labels & signs to communicate hazards
- Use engineering or work practice controls to isolate or remove the hazard:
  - ✓ sharps containers
  - ✓ appropriate practices for handling & disposing of contaminated waste
  - ✓ appropriate practices for cleaning contaminated surfaces & items



# Ergonomics in the Workplace

## *What are Ergonomic Hazards?*

- Heavy lifting (ex: students)
- Repeated movements  
(ex: typing at a computer)
- Awkward positions



# Ergonomics in the Workplace

## TRAINING AND ORIENTATION

- District's policies and procedures
- What are the hazards and how to control their potential to harm or injure?



# Ergonomics in the Workplace

## TRAINING AND ORIENTATION

- Training on lifting, transporting, etc.
- Orientation regarding the specific student
  - What kind of help?
  - How much help do they need?



# Indoor Air Quality

- OSHA air contaminant standards – permissible exposure limits for specific air contaminants
- OSHA standard for formaldehyde
- OSHA standard for hazardous chemicals in laboratories
- **No OSHA standard for general indoor air quality**
- OSHA recognizes potential application of General Duty Clause to respiratory hazards



# Temperature / Humidity

OSHA: office temperature/humidity is generally a comfort issue;  
General Duty Clause does not apply to comfort issues

Comfort guidelines:

- ASHRAE 55-2017: 67 – 82° F
- Mass. DLS: 66 – 68 ° F
- DESE: no less than 68° F when outdoor temperature is 0°; no greater than outdoors when outdoor temperature is above 80°

# Temperature/Humidity cont'd

- Health guidelines:
  - NIOSH: work/rest @ temps above 99° F (moderate work)
  - OSHA/ACGIH: breaks recommended at temps below 85° F
- Mass. Dept. of Public Health: when heat index (perceived temperature factoring in actual temperature and relative humidity) exceeds 88° F indoors, methods to increase thermal comfort of building occupants should be implemented

# What should a worker do if there are hazards?

- **First**, contact their union representative(s)
- **And** ask the employer to correct the unsafe working conditions
  - The employer must follow the "hierarchy of controls"
  - document the request in writing / provide pictures if possible
- **If ignored**, the union/member can file a complaint with the Dept. Of Labor Standards (confidential)
- **If an inspection happens**, workers or union can participate in the DLS investigation and get useful information.
- ORGANIZE!!

# When exposure to a hazard results in an injury or illness.

- Report the incident immediately to the employer and fill out an accident report as soon as possible. Get a copy.
- Seek out medical evaluation (school nurse, hospital, etc.)
- Notify the union of the incident / hazard(s) as soon as possible which can:
  - Protect member rights under the CBA or law
  - Give guidance regarding Workers' Compensation
  - Monitor progress / remediation
  - Work to prevent repetition





# The DLS Process

- Complaints can be filed via email or phone.
- The DLS may:
  - conduct an onsite inspection to evaluate conditions in the workplace.
  - make recommendations for the prevention of work-related injuries and illnesses.
  - issue a Written Warning with an "Order to Correct" when warranted by unsafe conditions.
  - issue a Civil Citation with Civil Penalty when the employer has repeatedly allowed an unsafe condition to occur, the condition has already caused a serious injury, or the employer has ignored a previous Written Warning.



# Retaliation

*“No person shall discharge or in any manner discriminate against”* because they initiated or participated in anything related to an OSHA complaint.

Remedy is under M.G.L. c. 149, § 185 and 29 CFR 1977.

- ❖ Two year window
- ❖ Civil action in Superior Court (common law tort)

- Ref: 454 CMR 25.06 (6)



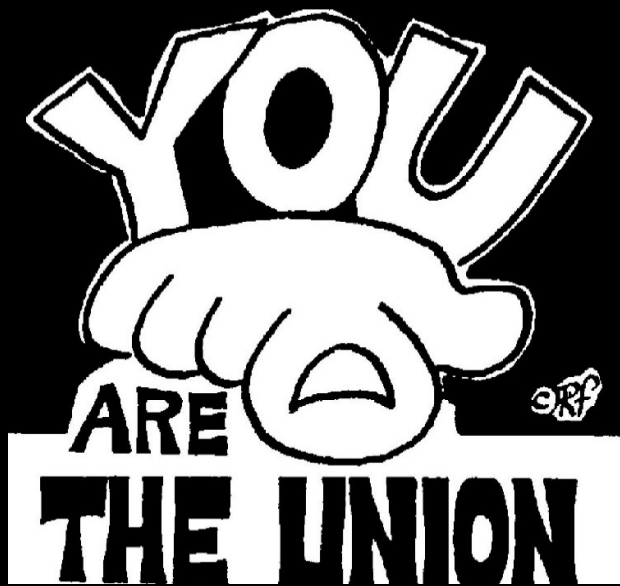
# Correcting Violations Through Organizing

- Collect Data
  - Photos
  - Use Instruments (thermometers, relative humidity gauges)
  - Information (150E Requests)
    - Integrated Pest Management (IPM) Plans
    - Asbestos Hazard Emergency Response Act (AHERA) Records
    - Inspection Reports (mold, lead, radon, etc.)
    - Survey Members / Building Occupants
  - Form a Health & Safety Committee within the Local
  - Request an MTA environmental H & S consultation

# Correcting Violations Through Organizing

- Using the Data

- Meet with members
  - follow up / keep them informed
  - create a newsletter / website
- Meet with community members (parents, school committee, health dept., etc.)
- Establish Labor – Management meetings
  - Representation on Health & Safety Committee for the district



# Negotiations Implications

Basic language: ***“The employer shall provide employees with a healthy and safe workplace.”***

Other helpful items include:

- Joint committees
- A designated Health & Safety officer
- Procedures/forms for logging concerns
- Access to information
- Non-retaliation language

# Questions & Answers



End with evaluation, please!

