

MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ACT (EXCERPT)
Act 154 of 1974

408.1027 Temporary order granting variance from standard; rule or order for variance from standard.

Sec. 27. (1) An employer may apply to the department of labor or the department of public health for a temporary order granting a variance from a standard or a provision thereof. A temporary order shall be granted only if the employer files an application which meets the requirements of subsection (2) and establishes that the employer is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, that the employer is taking all available steps to safeguard his employees against the hazards covered by the standard, and that the employer has an effective program for complying with the standard as quickly as practicable. A temporary order issued under this subsection shall prescribe the practices, means, methods, operations, and processes which the employer shall adopt and use while the order is in effect, and state in detail the employer's program for complying with the standard. A temporary order may be granted only after notice to employees and an opportunity for a hearing. However, the department of labor or the department of public health may issue an interim order to be effective until a decision is made on the basis of the hearing. A temporary order may not be in effect for longer than the period needed by the employer to achieve compliance with the standard or 1 year, whichever is lesser, except that the order may be renewed not more than twice so long as the requirements of this subsection are met and if an application for renewal is filed not less than 90 days before the expiration date of the order. An interim renewal of an order may not remain in effect for longer than 180 days.

(2) An application for a temporary order under this section shall contain:

(a) A specification of the standard or portion thereof from which the employer seeks a variance.

(b) A statement by the employer that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor.

(c) A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard.

(d) A statement of when the employer shall comply with the standard and what steps the employer has taken and will take, with dates specified, to comply with the standard.

(e) A certification that the employer has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application, and specifying where a copy may be examined at the place or places where notices to employees are normally posted and by other appropriate means. A description of how employees were informed shall be contained in the certification. The information to employees shall also inform the employees of their right to petition the department of labor or the department of public health for a hearing.

(3) The department of labor or the department of public health may grant a variance from a standard or a portion thereof when it determines that the variance is necessary to permit an employer to participate in an experiment approved by it designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(4) An affected employer may apply to the appropriate department for a rule or an order for a variance from a standard. Affected employees or their representatives shall be given notice of each application and an opportunity to participate in a hearing. The appropriate department shall issue a rule or an order if it determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order issued shall prescribe the conditions the employer shall maintain and the practices, means, methods, operations, and processes which he shall adopt and utilize to the extent they differ from the standard in question. The rule or the order may be modified or revoked upon application by an employer, employees, their representatives, or by the appropriate department on its own motion under this subsection at any time after 6 months from its issuance.

History: 1974, Act 154, Eff. Jan. 1, 1975.