Module 5: Effective Organizing Strategies

There Oughta Be A Law:
Indoor Environmental Quality (IEQ) and Legal Options

Becoming the educated advocate is another important organizing strategy when trying to identify, prevent, or resolve IEQ issues. It is important that local association health and safety committee’s arm themselves with existing sources of information, utilize existing agencies, and are aware of existing state laws and legal issues related to IEQ such as reasonable accommodations and workers compensation.

This handout provides information on the following topics:
- building codes
- sanitary codes
- state laws/regulations related to IEQ (asbestos, lead, construction, etc.)
- rights to information, inspections, formation of health and safety committees
- workers compensation
- ADA/disability discrimination
- work-related disability retirement
- contractual claims (grievances)
- third party claims
- information for states without collective bargaining agreements.

You can also view an expert interview on legal options at www.neahin/onlinetraining.

Things to keep in mind as you investigate an IEQ issue

- If you are in a collective bargaining state, you may have rights through your association that will be helpful in assessing an IEQ problem.

- Collective bargaining agreements may help with obtaining information if they have health and safety provisions and language giving an association access to information held by the employer. This can be used to get IEQ-related information.
• Occupational Safety and Health Administration (OSHA) standards do not apply to public employees. This means that generally, there aren’t any federal workplace health and safety standards that apply in K-12 public schools or in public colleges and universities.

• Some states may have state OSHA plans that provide the same health and safety protections to public employees that OSHA provides, on a federal level, to employees in the private sector.

• Some states may have their own workplace health and safety laws that apply to public employees.

State statutes and regulations

• Building codes
  • All states have building codes that include requirements for weather proof building envelopes, fire exits, ventilation systems, air barriers, etc. Most state building codes are based on the International Building Code, and are very similar.

  • Note that the building code that applies to your building is the building code that was in effect at the time the building was built or at the time of the building’s most recent major renovation.

  • Building codes are enforced by the local building department, and by a state code enforcement agency.

• Sanitary codes
  • All states have sanitary codes. These are the statutes that govern public health issues, such as plumbing, sanitation, and public nuisances.

  • Sanitary codes are enforced by local boards of health and the state department of public health. These agencies have the authority to close down a building that violates the sanitary code, if the building presents a public health hazard or nuisance.
Common school IEQ issues and laws or regulations

Asbestos

- All K-12 school systems must comply with the federal Asbestos Hazard Emergency Response Act (AHERA), which requires school districts to inspect and maintain asbestos in schools.

- AHERA requires that each school must have an asbestos management plan, 3-year re-inspection report, and documentation of abatement on file in the main office of each school building.

- EPA enforces AHERA in most states; some states have a state agency that has taken over enforcement.

- Some states may regulate asbestos in higher education facilities.

Building codes apply to building conditions that are poor or deteriorating, such as poor ventilation, leaking roofs/windows, non-functioning emergency exits, crumbling stairs, cracked walls, etc.

- Look to the building code that was in effect at the time the building was built, or last renovated.

- Some states have their own building code provisions that may apply to the particular condition in your school.

- Some states may have statutes requiring school districts to maintain schools in good condition, or may require the state to keep its higher education facilities in good condition.

Sanitary codes cover building systems that are poor or deteriorating, such as plumbing systems, sanitary systems, drainage systems, etc.

- The state sanitary codes would apply to conditions that present a public health issue or a nuisance.

- Sanitary codes are enforced by local boards of health and the state department of public health.
• In some states, the sanitary code may not be enforceable against state entities—i.e., state higher education facilities.

Chemicals
• Resource Conservation and Recovery Act (RCRA) - a federal law that regulates hazardous chemicals through labeling, storage, transportation, and disposal requirements. EPA enforces RCRA; many states have state environmental protection agencies that also play a role in regulating hazardous chemicals.

• Hazard Communication: Some states have hazard communication statutes, (Right to Know statutes) that require employers to provide product information (e.g., Material Safety Data Sheets – MSDSs) to employees, who work with particular substances. The same statutes may require that employers provide training to employees in the health hazards associated with particular substances, and how to respond in the event of an accidental spill. OSHA state plan requires hazard communication training be given to public employees if they have potential contact with chemicals.

• Some states may have lab safety requirements for schools.

Construction – related IEQ issue
• States may have regulations or guidelines for construction in occupied buildings (public health agencies, school construction agencies).

• Boards of health have authority to shut down a construction site if there are unhealthy conditions caused by construction activity.

• OSHA construction regulations apply to workers on the construction site.

IAQ and ventilation
• States may have statutes or guidelines on maintaining good indoor air quality in schools or public buildings generally.

• Building codes have ventilation requirements but the requirements that apply to the ventilation system in a school building are the requirements of the code in effect at the time the building was built or last renovated.
Lead
- States may regulate content of lead in paint, permissible locations of lead paint, and lead paint abatement procedures.
- Lead paint is usually regulated by the state’s public health department, or environmental department.
- OSHA construction regulations apply to workers on the construction site performing abatement work.

Mold
- States may have guidelines or regulations on mold remediation or preventing water entry into buildings.
- Building code requirements for weather-tight building envelopes may apply where chronic water intrusion is causing mold growth.

Pests (rodents, insects, birds, etc.)
- Many states regulate the kinds of pesticides that can be used in buildings, requiring notification to building occupants before the application of pesticides, and the certification of applicators of pesticides.
- Many pesticides are regulated by EPA or by state environmental protection agencies.
- Some states require the use of integrated pest management, i.e., non-toxic pest control.
- Pest control requirements are usually enforced by the state department of agriculture or environmental protection.

Polychlorinated biphenols (PCBs)
- EPA regulates reporting of the presence of PCBs and abatement and disposal operations.
- State environmental agencies may also have authority over monitoring and removal.
Radon

- States may require school districts to test for radon and install remediation systems.

- State public health agencies, environmental agencies, or education departments may have authority over radon testing and remediation.

Temperature

- State education or public health departments may have guidelines or regulations on permissible temperatures in schools.

- State labor departments may regulate temperatures in workplaces.

Vehicle exhaust

- State laws may limit the length of time that vehicles may idle.

- Building codes may limit proximity of air intakes to parking areas or delivery docks.

How to get access to health and safety or IEQ information about your school

- Associations have the right to obtain health and safety or IEQ information from employers. This includes any test results, reports, investigations, remediation plans, structural evaluations, etc. The right to obtain information flows from the duty of employers and associations to bargain in good faith, and provide information necessary to the administration of the collective bargaining agreement.

- Associations also have the right to conduct their own health and safety evaluations or inspections—part of a union’s right to health and safety information. The status of a state as a “right-to-work” state, refers to the authority of the employer to require that employees join a union as a condition of employment. Whether a state is a “right-to-work” state, by itself, doesn’t affect the rights the union has. Almost all states that permit unions, have state laws that are similar to the National Labor Relations Act (NLRA), which permits unions to conduct health and safety evaluations.

- Individual employees or employees in states that do not permit collective bargaining may obtain copies of IEQ-related documents without the involvement of an association.
• The Freedom of Information Act (FOIA): A federal law that gives members of the public access to federal agencies’ documents (reports, investigations, recommendations, etc.). Use FOIA if you want documents from a federal agency such as the EPA.

• State public record/ freedom of information acts: Most states have laws similar to FOIA, that give members of the public access to documents that have been received or generated by public agencies.

• Formation of health and safety committees: In collective bargaining states, associations have the right to form health and safety committees that can gather information about IEQ problems in their educational institutions, and can advocate on behalf of employees affected by IEQ problems.

  • In some states, employees may have the right to form health and safety committees in schools independent of association participation.

  • Some states may have statutes authorizing (or requiring) health and safety committees in schools, independent of association participation.

• Construction/renovation: Project meetings are held periodically with the architect, contractor, project manager, and a representative of the educational institution to review progress on the construction/renovation project. These meetings are usually public so that building occupants may attend to obtain information about the project.

  • State public construction statutes often permit employees to serve on building committees, have access to information, and have an opportunity for continuous input about construction or renovation projects.

  • As part of their right to information, associations can make periodic inspections of the construction site to see whether appropriate measures are being taken to isolate construction from occupied parts of a building.

What are the legal options available to an employee whose health is affected by IEQ conditions?
Workers’ compensation

- Workers’ compensation is designed to provide benefits to an employee who is unable to work because of a work-related illness/injury. Benefits include income replacement—i.e., benefits that pay a percentage of an employee’s lost wages, and payments for medical treatment.

- Workers’ compensation is the only legal remedy available to an injured employee. An employee cannot sue his/her employer for negligence that results in a work-related injury or illness.

- An employee with work-related health problems may have options under a collective bargaining agreement, separate from and in addition to workers’ compensation. In addition, an employee may have a legal claim against his/her employer in connection with disability discrimination statutes.

- Workers’ compensation can continue for the rest of an employee’s life. Public employees generally don’t get social security. States run public employee retirement funds that substitute for social security so public employees aren’t eligible for supplemental security income (SSI). However, if a public employee is permanently and totally disabled because of a work-related injury/illness, s/he may be eligible for a work-related disability pension in the state’s retirement system.

ADA/disability discrimination issues (Americans with Disabilities Act)

- Federal and state disability discrimination laws (in general) prohibit discrimination against an employee who has a medical condition that substantially affects one or more life functions (like breathing, walking, talking, etc.), and who can perform the essential functions of his/her job, with or without a reasonable accommodation.

- What constitutes a “reasonable” accommodation depends on (among other things) the size and resources of the employer’s operation, the expense of implementing the accommodation, the composition, and structure of the workforce.

- Court cases under federal and state disability discrimination laws have recognized respiratory conditions, such as asthma, as a “handicap” that requires reasonable accommodations.

- The burden is on the employee requesting the accommodation to prove that his/her health condition meets the statutory definition of disability and that s/he
requires an accommodation. Disability discrimination laws do not require the employer to provide the accommodation that the employee requests: the requirement is that the employer provide an accommodation that is reasonable.

Work-related disability retirement
- Many states provide for work-related disability retirements for public employees who have a health condition that is work-related and who are totally and permanently disabled.

- An employee who applies for a work-related disability retirement has the burden of proving that his/her medical condition is work-related, that it is disabling, and that it is permanent.

Contractual claims (grievances)
- Collective bargaining agreements that have health and safety language may give an employee who has an IEQ-related illness the option of filing a grievance.

- Depending on the contract language, a grievance might recoup lost wages, restore sick leave, or fix the condition that is causing an employee’s health problems.

Third party claims
- If a non-employer party is responsible for an IEQ condition, affected employees may have a legal claim against that third party (e.g., ventilation contractor, maintenance companies, etc.).

- Statutes of limitations will apply, and are often quite short for newly-constructed buildings.