**12-179 DEPARTMENT OF LABOR**

 **BUREAU OF LABOR STANDARDS**

 **BOARD OF OCCUPATIONAL SAFETY AND HEALTH**

**Chapter 9: OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR ISSUING VARIANCES IN THE PUBLIC SECTOR**

**Summary**: The purpose of this Chapter is to incorporate by reference where applicable rules governing Occupational Safety and Health as promulgated by the Federal Occupational Safety and Health Administration at 29 CFR Part 1905 as of June 1, 2018.

**9.1 Variance**

As set forth in 26 M.R.S. §571, any affected employer may apply to the director for order for a variance from a standard promulgated under this chapter. Affected employees shall be given notice of each application and an opportunity to participate in a hearing. The director shall issue the order if he determines on the record, after a hearing and, where appropriate, an inspection, that the proponent of a 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 his employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. Such an order may be summarily revoked by the director on his own motion or modified or revoked by the director upon application by an employer or employee in the manner prescribed for its issuance. Any person aggrieved by an order of the director may appeal, at any time, from the order to the board under the process established in 26 M.R.S. §568.

**9.2 Incorporation by Reference**

 In addition to the provisions of state law in the preceding section, the State Board of Occupational Safety and Health adopts where applicable to public employees under the authority of the Board the *Standards for Occupational Safety and Health* as promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration as Title 29 *Code of Federal Regulations*, Part 1905, revised as of June 1, 2018.

**9.3 Exception**

 All references to Secretary of Labor in 29 CFR Part 1905 shall mean Director, Bureau of Labor Standards.

STATUTORY AUTHORITY:

 26 MRS §§ 569, 571

EFFECTIVE DATE:

 July 7, 2019 – filing 2019-111