

Legal Duties of Instructor

DUTY TO INSTRUCT—foreseeable

“An instructor who does NOT instruct properly could place a student in a dangerous situation where the lack of appropriate information might contribute to an accident.”

“A prudent instructor must ANTICIPATE and EXPLAIN/DEMONSTRATE any problems that could arise for each experience and instruct proper safety to the students.”

DUTY OF SUPERVISION

Instructors are responsible for APPROPRIATE BEHAVIOR on the student's part.

If one student hurts another, it is the instructor who is the responsible adult.

Instructors must teach and maintain CLASSROOM CONTROL.

The instructor is IN LOCO PARENTIS—You are the local parent and the responsible adult during the educational experience.

DUTY TO MAINTAIN

Instructors are responsible for seeing that EQUIPMENT is kept in safe working order.

To further delineate the role of the instructor in safety and the expectations of society, the following issues are addressed:

- ❖ Underlying reason and prudence.
- ❖ Facility, tool, and equipment concerns.
- ❖ Personal and student training, education, and preparedness.
- ❖ Present judiciary support, direction, and definition.

Underlying Reason and Prudence

Labor and Industries dictates what an instructor can do to protect students, self, and others while providing a learning experience for eager, young minds. DOH dictates student safety. The court system understands that an instructor(s) who is doing everything reasonable and prudent and within the law (i.e., Labor and Industries / AKDOL) under the given circumstances to supervise students working in a shop environment is doing what he or she should do to maintain a safe learning environment.

As you, the instructor ponder your concerns involving facility, hand tools, power tools, and equipment that may pose a risk to students, you must **take reasonable and prudent** steps to prevent accidents from happening.

Facility, Tool, and Equipment Concerns

As we know, nothing is 100 percent safe. A person can be injured as simply as self-impalement by a pencil or tripping down a set of stairs, if not used correctly. Do we not use pencils and stairs, then? Society has provided you a “nod of its head” by realizing that you teach a discipline that is outstanding compared to any other at this level of education. Society WANTS you to give students this experience that no other school discipline can offer. Society **trusts** you to do it, do it well, and do it safely as long as you comply with society’s laws as an employee (Labor and Industries / AKDOL).

As a professional, it is **reasonable and prudent** that you maintain relatively clean, uncluttered facilities. Properly working tools and equipment, safety signs, posters, and floor markings where applicable, safety guards, the wearing of Personal Protective Equipment (PPE), etc., are examples of **reasonable and prudent** measures and examples of Labor and Industries / WISHA requirements to protect all persons in the shop environment. Should there be a facility, tool or equipment concern that you as the **professional** feel does not allow safe education to take place in a **reasonable and prudent** manner, immediately contact your supervisor to resolve how to bring the article in question back into **reasonable and prudent** compliance. Also, be fair in developing your paradigm of what reason and prudence entails. Look at the scenario from society’s point of view. The phrase “not everything goes” is critical in the CTE educational environment. That’s part of what makes you a professional. All instructors are obligated to follow all LAB Labor and Industries / AKDOL regulations at all times.

Often middle and junior high schools get the “hand-me-downs” from high school programs because they do not receive CTE enhancement dollars to assist in properly maintaining their facilities and equipment. Please conceptualize what a **reasonable and prudent** person would think a student at the middle/junior high school age should be experiencing in this environment and what operations they should be performing. In the following section, Managing Risk, there are recommendations for the junior high/middle school age appropriators for power equipment usage.

Personal and Student Training, Education, and Preparedness

- It is crucial that you, as a professional, obtain and keep current your credentials and training so that you, in turn, may provide your students with a quality, safe learning experience. It is your responsibility to obtain the necessary training, experience, degree, etc. as outlined by the Office of Superintendent of Public Instruction (OSPI) to obtain/maintain valid credentials as recognized by the certification section of OSPI and society as a whole that you are licensed to teach career and technical education in the state of Alaska. It is **required** that you be appropriately certified.
- Nonlicensed and nonendorsed instructors employed with assignments involving career and technical education classes should NOT operate tools, equipment and machinery, nor allow their students to do the same. Since each unlicensed and/or unendorsed individual possesses a different history of training and experience, the CTE administrator in your local district will make **reasonable and prudent** accommodations, requirements, and limitations of the individual instructor.
- There is a higher liability to the instructor and school district if a noncertified instructor is used.
- It is **reasonable and prudent** for a **professional** instructor to provide all students with adequate safety training. This could include, but is not limited to:
 - Safety demonstrations—attentively watched by all.
 - Safety videos.
 - The proper and adequate wearing of personal protective equipment (PPE) appropriate to the industry or program area.
 - Safety quizzes and tests, etc.
 - Students demonstrate proficiency in facility, tool, and equipment safety to the instructor, who uses his or her **professional** assessment in allowing the student to utilize shop facilities.

- Training by example is of utmost importance. A **reasonable and prudent** instructor will adhere to the standards imposed by Labor and Industries / AKDOL as a **professional** imposes these same standards upon his or her students. Impressionable minds are quick to see the level of dedication or lack thereof in their instructor. It is imperative that you personify the example of safe and enjoyable learning that you desire your students show you.
- If there is ambiguity, doubt, disapproval, or curiosity concerning any issue of **personal and student training, education and preparedness**, contact another instructor, your CTE supervisor, or OSPI education specialist that can give you the appropriate information in allowing you to obtain and maintain a reasonable and prudent effort to keep students safe while learning.

Present Judiciary Support, Direction, and Definition

We, as a society, have always recognized the need for applied education. Society as a whole then is placed with the burden of finding, training, and otherwise supporting those who society chooses to teach this valuable content area. YOU are the **professional** who has accepted the charge from society to do just that. Society **trusts** you to follow the laws implemented by the society— Labor and Industries / AKDOL, DOH, and OSPI.

MANAGING RISK

- ❖ The school, as the employer, needs to provide the teacher with the basic requirements for equipment, training, and time for that training.
- ❖ Teachers are responsible for seeing that equipment in the lab or shop is kept in safe operating condition, according to applicable State and Federal laws (Labor and Industries / AKDOL—OSHA—ANSI).
- ❖ Teachers are responsible for providing instruction and demonstrating the safe and proper operation procedures for each piece of power equipment, portable power hand tools, hand tools, cleaning, and/or finishing procedures.
- ❖ Teachers must plan ahead and be aware of potential dangers and problems.
- ❖ Teachers must have and maintain order and control in the classroom and/or lab (shop).
- ❖ Teachers must teach a proper degree of respect for the dangers that are inherent in the lab or shop.
- ❖ Teachers should never leave students unattended.
- ❖ Teachers cannot delegate the responsibility of a class to a student (TA).
- ❖ Students must have received and demonstrate or show they have read and understand a copy of the safety rules for each piece of equipment that they may use.
- ❖ Students must pass a general shop safety test with a score of 100 percent.
- ❖ The teacher should keep safety test scores until the student is 21 years old. (A sample of the safety test shall be available upon request.)
- ❖ Students need to sign a document that they will not use any equipment until they have passed a safety test, have observed a demonstration on that piece of equipment, and have the instructor's permission.
- ❖ Parents should sign a parent awareness document before the student uses any equipment.
- ❖ Do not underestimate the seriousness of an accident. Call 911—and provide emergency care until medical responders arrive.
- ❖ After the pressure of an event has subsided, complete an incident report stating the facts of what occurred and submit to district risk manager (or appropriate district official). Go over the report with the student for a learning experience.
- ❖ Keep your own copy of records and affidavits.
- ❖ CTE directors, administrators, principals, counselors, and teachers must be reasonable and prudent in seeing that classes are not overloaded.

Career and Technical Education Program Standards

The standards serve as a basis for curriculum, instruction, equipment, and facilities for an approved CTE program. The program standards indicate the requirements for a safety program that meets applicable WISHA laws as applied to each approved program in career and technical education.

Instruction: Curriculum and instruction must be directly related to industry standards, local advisory committees, CTE program standards, and course/program outcomes. Instruction is outcome-based, and verification of competence is determined by mastery of course outcomes. Instruction in proper and safe use of any equipment, required for mastery and competency, shall be provided within the approved program.

Equipment and Facilities: Equipment and facilities are consistent with the industry, is appropriate to support the curriculum identified in the state curriculum framework, and maintained in a manner that meets safety requirements and applicable WISHA laws.

Instructional Staff: Instructional staff must hold a valid Alaska State CTE certificate appropriate for the programs they teach. Instructors must keep technical and professional skills current through the CTE program standards and business/industry advisory committee involvement. This ensures students are provided accurate and safe state-of-the-art information.

Program Advisory Committee: Each state-approved CTE program must be supported by a program advisory committee made up of individuals who are working in the occupational area.

Appropriate Tools and Equipment

Identifying appropriate tools and equipment for your lab

Instructors:

Due to the nature of career and technical education (CTE) offering actual hands-on, performance-based education, there may be concern (as the instructor) that an accident or injury may occur in your school technology and/or CTE labs to yourself, a student, or others that you will be held liable without refute. The purpose of this page is to help you, the instructor, identify appropriate tools and appropriate equipment for your lab.

- **First**, it is important that you understand what the Office of Superintendent of Public Instruction, Labor and Industries / WISHA, DOH, and your school districts, expect FROM you as well as the support they can GIVE you concerning these issues:
 - Underlying reason and prudence.
 - Facility, tool, and equipment concerns.
 - Personal and student training, education, and preparedness.
 - Present judiciary support, direction, and definition.

These issues are discussed in detail in the *legal duties of the instructor section* of this manual. Please review them!

- **Second**, it is important that you understand **both** the curriculum and the student body that you are teaching. You need to have appropriate standards and the objectives for each of the courses that you are teaching.
- **Third**, select appropriate activities for **both** the curriculum and the students you will be teaching.
- **Fourth**, choose the appropriate tools and equipment to teach each course.
- **Fifth**, get your principal's and your district CTE director's approval of your curriculum, standards and the objectives, activities, and the tools and equipment for the courses you are teaching.

****Remember:** Any piece of equipment that is in need of maintenance or in need of repair **should not be used** until properly maintained and repaired. Disable it or remove it. **No student or individual** should be allowed to use a piece of equipment or a tool without the proper instruction on safety and operation. Do not allow tools or equipment to be used without the **proper supervision**.

Safety and the Law

1. Risk of suit is often greatly exaggerated in your minds; however, it is ever present.
2. We will show you that there is more protection for you than you think. Fear of litigation should **NOT** restrict effective, safe teaching and learning. Participatory activities should remain interesting and exploratory. They should not become sterile and ineffective.
3. We cannot insulate ourselves from danger at any time in our lives. This program is to teach you **RESPONSIBILITY** and forethought.
4. We hope to make safety in the lab a **HABIT** in your teaching career.
5. We believe that knowledge is the key to any potential problems.
6. The law requires adherence to regulations and requirements (see “negligence” on next page). **THIS IS WHAT GOOD SAFETY IS ALL ABOUT.**

Child Labor Regulations

<https://labor.alaska.gov/employer/>

Prohibited Occupations for Nonagricultural Employees

The *child labor rules* that apply to nonagricultural employment depend on the age of the young worker and the kind of job to be performed. Fourteen years old is the minimum age for nonagricultural employment covered by the Fair Labor Standards Act (FLSA). In addition to restrictions on *hours*, the Secretary of Labor has found that certain jobs are too hazardous for anyone less than 18 years of age to perform. There are additional restrictions on where and in what jobs 14- and 15-year-olds can work. These rules must be followed unless one of the FLSA's child labor exemptions applies. Alaska State enforces the laws under the Federal FLSA plus additional state labor regulations.

- A youth **18 years or older** may perform any job, whether hazardous or not.
- A youth **16 or 17 years old** may perform any nonhazardous job.

Hazardous Occupations

Eighteen is the minimum age for employment in nonagricultural occupations declared hazardous by the Secretary of Labor. The rules prohibiting working in hazardous occupations (HO) apply either on an industry basis or on an occupational basis, no matter what industry the job is in. Parents employing their own children are subject to these same rules. Some of these hazardous occupations have definitive exemptions. In addition, ***limited apprentice/student-learner exemptions apply to those occupations marked with an asterisk who are at least 16 years old and enrolled in an approved program.*** Those individuals 18 years of age or older are not subject to special job or occupation restrictions. Individuals of all ages are entitled to all of the health and safety protections under the Alaska Industrial Safety and Health Act (Labor and Industries / AKDOL).

- HO#1 Manufacturing and storing of explosives.
- HO#2 Driving a motor vehicle and being an outside helper on a motor vehicle.
- HO#3 Coal mining.
- HO#4 Logging and saw milling.
- HO#5 Power-driven woodworking machines. *
- HO#6 Exposure to radioactive substances.
- HO#7 Power-driven hoisting apparatus.
- HO#8 Power-driven metal forming, punching, and shearing machines. *
- HO#9 Mining, other than coal mining.
- HO#10 Meat packing or processing (including the use of power-driven meat slicing machines). *

- HO#11 Power-driven bakery machines.
- HO#12 Power-driven paper-product machines. *
- HO#13 Manufacturing brick, tile, and related products.
- HO#14 Power-driven circular saws, band saws, and guillotine shears. *
- HO#15 Wrecking, demolition, and ship breaking operations.
- HO#16 Roofing operations. *
- HO#17 Excavation operations. *

More details about the above listings can be obtained by reviewing the child labor regulations.

- A youth **14 or 15 years old** may **not** work in the manufacturing or mining industries or in any hazardous job (see the list of hazardous occupations). In addition, a 14- or 15-year-old may **not** work in the following occupations.
 - 296– Communications or public utilities jobs.
 - 297– Construction or repair jobs.
 - 298– Driving a motor vehicle or helping a driver.
 - 299– Manufacturing and mining occupations.
 - 300– Power-driven machinery or hoisting apparatus other than typical office machines.
 - 301– Processing occupations.
 - 302– Public messenger jobs.
 - 303– Transporting of persons or property.
 - 304– Workrooms where products are manufactured, mined, or processed.
 - 305– Warehousing and storage.

The Law Defined

- PLAINTIFFS—the people doing the suing.
- DEFENDANTS—the people being sued.

Classroom injuries are usually tried in a STATE trial court.

- APPELLATE court—appeals from the state court’s decisions.
- STATE court—consists of a judge and/or jury.
- BURDEN OF PROOF—The plaintiff must prove that damage has been done to them by the defendant due to the defendant’s negligence.
- NEGLIGENCE—Conduct that falls below the standard established by law or the profession to protect others from harm. It is failure to do something that a reasonable person would do (omission) or the doing of something that a reasonable person would not do (commission). Teachers must conduct themselves *professionally*.
- REASONABLE—Moderate, rational, not excessive or extreme.
- PRUDENT—Cautious, discreet, managing very carefully.

Proximate Cause

WHERE DOES THE BLAME LIE?

COMPARATIVE NEGLIGENCE—plaintiff may still recover even if they were also negligent —though their award is reduced. Students will generally be held accountable for their actions but **ONLY** if they are fully informed beforehand.

FIRST AID—“Good Samaritan” law exempts anyone from rendering simple first aid to a student in immediate danger. (Remember your blood borne pathogen training to protect yourself.)

DOCUMENTATION

The Statute of Limitations in the state of Alaska for tort liability lawsuits is three years. Parents cannot waive their minor child’s rights. In the event of an accident to a minor child, that child can file a claim for damages on their own behalf once they reach the age of majority. The Statute of Limitations begins to run on their 18th birthday until they reach the age of 21.

If you have an incident in your classroom, do the following:

1. Complete an incident report including the time, date, and circumstances. Be factual—do not state opinions.
2. Get the principal’s signature on the incident report.
3. Forward the original incident report to the district’s risk manager (or appropriate district official) for timely reporting to your insurer. Keep a copy in a **PERMANENT** file that you save.

DO NOT RELY upon releases or waivers as a substitute for safety precautions.