

PUBLIC EMPLOYEE SAFETY AND HEALTH

New York State's Public Employee Occupational Safety and Health Act of 1980 provides safety and health coverage to all public employees at the State and local levels. The Act provides that the same safety and health standards that apply to workers in the private sector, OSHA Standards, will be applied to employees in the public sector. This brochure is designed to give you a broad understanding of the features of the law.

Employee Responsibilities:

Under the Act, employees include all employees of the State, any political subdivision of the State, and public authorities created by the State. An employer is required to furnish a workplace that is free from recognized hazards to employees. The employees also have responsibilities to comply with the safety and health standards (OSHA Standards) and other regulations that apply to their own actions and conduct on the job.

Penalty Assessment:

An employer who fails to correct a violation by its abatement date is subject to a PER DAY penalty assessment. A penalty of up to \$50 per day for each non-serious violation, and of up to \$200 per day for each serious violation, will be assessed until the violations are complied. The penalty assesses for each violation will be listed in the Failure to Abate Notice.

Standards:

The law requires the Commissioner of Labor to adopt all standards promulgated under the United States Occupational Safety and Health Act.

Inspections:

The Commissioner of Labor has been given exclusive authority to enforce the safety and health standards promulgated under the Act. An inspection can result from a complaint, an accident, or as part of a regularly scheduled inspection program. Imminent danger complaint inspections receive the highest inspection priority.

A representative of the employer and a representative of the employees are entitled to accompany the inspector during the course of an inspection. This is known as the "walk around."

Enforcement:

If a Notice of Violation and Order to Comply is issued to an employer, it will describe the specific nature of the violation, including reference to the standard alleged to have been violated, the type of violations (serious, non-serious, willful or repeat), and set a reasonable time for compliance. When the Commissioner issues an order to comply, the employer must post it or a copy conspicuously at or near each place of violation cited, where it will be clearly visible to affected employees. The Commissioner will make copies of Orders to Comply available to all organizations that represent employees.

Employee Contest:

An affected employee or authorized employee representative may submit a notice of contest in writing with respect to the abatement period in the Notice of Violation and Order to Comply.

Informal Conference:

An informal conference is a means for a Supervising Inspector of the Public Employee Safety and Health (PESH) Bureau and an employer, employee, or an authorized representative of the employees to meet and discuss issues arising from an inspection and the resultant orders to comply. A request for an informal conference must be made to the nearest PESH district office by telephone or letter, within 20 working days from the issue date on the orders.

Appeals:

When employees do not agree with the Commissioner's issuance of an order, the employees or their representative may, (in accordance with Section 101 of the Labor Law), petition the Industrial Board of Appeals for review. The appeal should be addressed to the Industrial Board of Appeals, Empire State Plaza, Agency Building 2, 20th Floor, Albany, NY 12223, as prescribed by its Rules of Procedure, which may be obtained from the Board. In cases where an employer or an employee is dissatisfied with a decision of the Industrial Board of Appeals, either may begin a proceeding according to Article 78 of the Civil Practice Law and Rules, provided they do so within 60 days after the Board's decision.

Alternative Compliance Agreement:

In situations where citations have been issued and the Public Employer proposes an alternative method of compliance, PESH may enter into an alternative compliance agreement. PESH will enlist the services of the Division of Safety and Health's Engineering Services Unit (ESU) to assist the review of the Employer's proposal. The Employer will submit a proposal for an alternative method of compliance to ESU, which will review it and schedule a meeting to discuss and refine the proposal. The meeting attendees will be the Employer, affected Unions and PESH. The results of this meeting will be written up into an alternative compliance agreement to which all parties have agreed. PESH will conduct an inspection to ensure the employer has complied with the alternative compliance agreement.

Injunctions:

When an inspector observes a situation believed to present an imminent danger of serious physical harm or death to an employee, the inspector shall notify the employees involved and the employer, and request immediate corrective action. If the employer concurs with the inspector and takes action to remove the imminency of the danger, an injunction will not be necessary. If the employer does not concur and refuses to take action to remove the imminency of the danger, the inspector will advise both parties that a recommendation will be made that the Commissioner of Labor take legal action to alleviate the

situation. In such situations the Commissioner is required to seek injunctive relief within 48 hours. If the Commissioner fails to seek this relief, any person affected by the situation may do so.

Petition to Modify an Abatement Date:

An employer may apply for a Petition to Modify an Abatement Date. This would be done when the employer is unable to comply with a violation because of unavailability of professional or technical personnel, or of materials and equipment needed to come into compliance. In addition, the employer must prove that all available steps are being taken to protect the employees exposed to the hazard and to institute a program to reach compliance as quickly as practicable.

Variations:

Permanent variances may be requested by an employer from a standard promulgated under the Act. Employees must be given notice of each application and the opportunity to participate in a hearing.

The Commissioner may issue a permanent variance after due process, including a hearing, if evidence shows that the conditions, practices, means, methods, operations, or processes used or proposed by the employer will provide employment and places of employment as safe and healthful as those which would prevail if the employer complied with the standard.

A permanent variance may be modified or revoked by an application by the employer,

employee or employee representative or by the Commissioner after six months from its issuance.

An employer may apply for a temporary variance from a newly promulgated standard if the employer is unable to comply by the effective date because of the unavailability of materials, equipment or technical personnel.

Record keeping:

Part 801 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York specifies the record-keeping requirements established by the Commissioner of Labor under Sec. 27a of the Labor Law. Contact one of the offices listed on this brochure for a copy of the rules.

Discrimination:

No employer may discharge or otherwise discipline or in any manner discriminate against any person because the employee has filed a complaint or instituted, or caused to be instituted, any proceeding under or related to this program. Employees who consider that discrimination has been practiced against them may file a complaint with the Commissioner of Labor. The Commissioner must investigate the allegation and make a determination in the matter.

For additional information, contact the nearest district office.

ALBANY 12240

W. Averell Harriman State Campus
Bldg. 12, Rm. 158
Tel: (518) 457-5508

BINGHAMTON 13901

44 Hawley Street, Rm. 901
Tel: (607) 721-8211

BUFFALO 14202

65 Court Street
Tel: (716) 847-7133

GARDEN CITY

400 Oak Street
Garden City, NY 11550
Tel: (516) 228-3970

NEW YORK CITY

247 W. 54th Street - 4th Floor
New York, NY 10019
Tel: (212) 621-0773

ROCHESTER 14607

109 S. Union Street, Rm. 402
Tel: (585) 258-4570

SYRACUSE 13202

450 South Salina Street
Tel: (315) 479-3212

UTICA 13501

207 Genesee Street
Tel: (315) 793-2258

WHITE PLAINS 10605

120 Bloomingdale Road
Tel: (914) 997-9514

Employees' Rights and Responsibilities

**under the New York State
Public Employee Safety
and Health Act**

