

PESH Staff Directive

Public Employer Workplace Violence Prevention Programs

Labor Law Section 27b directed the Commissioner to establish rules and regulations for the enforcement of the provisions of Section 27b.

On April 29, 2009 12NYCRR Part 800.6 was promulgated and published in the State Register as a final rule.

The Rule was promulgated as a PESH rule at the recommendation of the Occupational Safety and Health Hazard Abatement Board.

The rule has a stepped compliance period as follows: May 29, 2009 the Employers Policy Statement must be completed.

The workplace risk evaluation and determination must be completed by June 29, 2009.

The workplace violence prevention program must be completed by July 14, 2009.

Employers shall be in compliance with the entire Part by August 27, 2009.

All programmed type inspections will include a review of the employers program.

Beginning with a review of records, a comparison of the employers risk assessment with the records, the programs listed means to eliminate or reduce the risks of violence to the extent possible, a review of training outlines to assure they address the risks and an interview of employees to determine the effectiveness of the training.

12 NYCRR PART 800.6

The rule and regulation is arranged in the format of an employer safety and health program. Management Commitment, Employee Involvement, Workplace Examination, Hazard Correction (written program) Employee Training, Recordkeeping and Review Procedures. Part 800.6 is promulgated in the rules and regulations for Public Employee Safety and Health.

PUBLIC EMPLOYER WORKPLACE VIOLENCE PREVENTION PROGRAMS

12NYCRR Part 800.6

(a) Title and Citation: Within and for the purposes of the Department of Labor, this part may be known as Code Rule 800.6, Public Employer Workplace Violence Prevention Programs, relating to requirements of public employers to develop and implement programs to prevent and minimize the hazards of workplace violence to public employees; allowing any employee or authorized employee representative of employees who believes that a serious violation of this safety or health standard exists, or an imminent danger exists, to request an inspection by the department of labor; and providing for the enforcement of such requirement by the Commissioner of Labor. It may be

cited as Code Rule 800.6“Public Employer Workplace Violence Prevention Programs” as an alternative and without prejudice to its designation and citation established by the Secretary of State.

(b) Purpose and Intent: It is the purpose of this part to ensure that the risk of workplace assaults and homicides is evaluated by affected public employers and their employees and that such public employers design and implement protection programs to minimize the hazard of workplace violence to employees.

This section explains the legislature’s intent that Employers and Employees examine the workplace and that the Public Employer design and implement a program to minimize the risk of workplace violence. This was the basis for the degree of participation given to employees.

(c) Application: This part shall apply throughout the State of New York to the State, any political subdivision of the state, any public authority, public benefit corporation or any other governmental agency or instrumentality thereof.

This part shall not apply to any employer as defined in Section twenty-eight hundred one-a of the Education Law.

800.6 (c) Defines the application of the rule in clear terms. The public schools that are required to develop emergency action plans to protect staff and students from violence are exempted from this rule. Those public educational employers are listed in Section 2801a of the Education Law.

They are:

Public School Districts

BOCES

New York City Public Schools

County Vocational Education and Extension Boards

The exemption does not include SUNY or other colleges or educational facilities operated as an adjunct to the agencies primary function, DOCS, OMH, OMRDD, Juvenile detention facilities.

(d) Terms: As used in or in connection with this part, the following terms mean:

(1) Authorized Employee Representative. An employee authorized by the employees or the designated representative of an employee organization recognized or certified to represent the employees pursuant to Article 14 of the Civil Service Law.

800.6(d)(1) "Authorized Employee Representative" is defined so that it is the same as the definition in the PESH act and the representatives will be provided with the same rights as laid out in the FOM and Part 802.

Whenever the rule specifies participation of the Authorized Employee Representative that representative must be the employee Representative meeting the criteria

listed above. The employer may not appoint the employee representative of his choosing.

The mere presence of management-appointed employees to a committee who happen to also be union members does not satisfy the requirement that unions have the right to appoint their own representatives as "Authorized Employee Representatives".

(2) Commissioner. The Commissioner of Labor of the State of New York or his or her duly authorized representative for the purposes of implementing this Part.

(3) Employee. A public employee working for an employer.

(4) Employer. The State, any political subdivision of the State, any public authority public benefit corporation, and any other governmental agency or instrumentality thereof, except that an employer shall not include, for purposes of this part, any employer defined as such in Section twenty-eight hundred one-a (2801a) of the Education Law.

d(4) Defines "Employer" as the state any political subdivisions, public benefit corporations and any other governmental agencies. Basically all employers covered by the PESH Act. The Law exempts public schools as defined in the Education Law.

The simple way to determine if an educational establishment falls under this rule is to ask the employer if they have the safety programs required under

section 2801a of the Education Law. If they were required to do that planning then they are exempt.

The inspection staff should refer exempt employers who have not developed and implemented the plan required under 2801a to the Program Managers Office.

The Program manager will refer the issue to the Education Department.

(5) Imminent Danger. Any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided for by this Part.

d(5) Imminent Danger definition uses the exact language found in the PESH FOM. The FOM procedures must be followed to determine if imminent danger exists. See chapter VII section a(1).

(6) Retaliatory Action. The discharge, suspension, demotion, penalization or discrimination against any employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

d(6) Retaliatory action, the definition is the same as that in the Law. Complaints of retaliatory action will be investigated as a PESH discrimination case.

(7) Serious physical harm. Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ or a sexual offense as defined in Article 130 of the Penal Law.

The standard occupational definitions found in the FOM did not properly address the workplace violence issues. This definition is taken from the Penal Law. Most definitions do not include sexual assault because it may leave no physical injury.

(8) Serious Violation: A serious violation of the public employer workplace violence prevention program (WVPP) is the failure to:

- (a) Develop and implement a program.
- (b) Address situations which could result in serious physical harm.

Note that employees may file a complaint only when there is a serious violation of the employers WVPP as defined here.

(9) Supervisor. Any person within the employer's organization who has the authority to direct and control the work performance of an employee, or who has the authority to take corrective action regarding the violation of a law, rule or regulation to which an employee submits written notice.

d(9) Supervisor. Definition is the same as that in the Law. It designates whom employees must serve written notice upon before a complaint can be filed with PESH. Employers should be encouraged to designate an individual to receive such written notices in the written program and assure that employees are trained to provide notice to that individual. This becomes important since not all individuals who have the title "Supervisor" have the authority to change procedures or policies. It is also acceptable if the employer wishes to follow a format or procedure where complaints are taken by an immediate supervisor and forwarded to an individual for action.

(10) Workplace. Any location away from an employee's domicile, permanent or temporary, where an employee performs any work-related duty in the course of his or her employment by an employer.

d(10) Workplace. Definition is the same as that in the Law. The work place extends to any location where a public employee performs work for an employer except at his or her domicile. The definition covers buses, vans, sewers, manholes, or anywhere else that an employee

performs work. The definition would require employers to design protections and accountability processes for field staff.

(11) Workplace Violence. Any physical assault or acts of aggressive behavior occurring where a public employee performs any work-related duty in the course of his or her employment including but not limited to:

(i) An attempt or threat, whether verbal or physical, to inflict physical injury upon an employee;

(ii) Any intentional display of force which would give an employee reason to fear or expect bodily harm;

(iii) Intentional and wrongful physical contact with a person without his or her consent that entails some injury;

(iv) Stalking an employee with the intent of causing fear of material harm to the physical safety and health of such employee when such stalking has arisen through and in the course of employment.

Because we are requiring that incidents be reported and examined the rule defines workplace violence. Employers have commented that we may only use homicide and assault but these lesser acts usually precede an assault or homicide. Reporting the lesser incidents will

provide an overview of the violence problems in the workplace and are intended to prevent assaults and homicides.

Each of the 4 sub sections constitute assault, menacing or stalking under the Penal Law. Depending on the seriousness of the action could be felonies.

The seriousness of some crimes increases when they are perpetrated on public servants.

The definition does not include instructions from supervisors or managers to subordinates in how to perform their work duties even if it may be done in what the employee describes as intimidating manner or loud voice.

Inspection staff must use good judgment in examining complaints about discussions with a supervisor about work performance. PESH will not investigate unless physical harm is threatened, attempted or inflicted.

(12) Workplace Violence Prevention Program. An employer program designed to prevent, minimize and respond to any workplace violence, the development and implementation of which is required by Article 2, Section 27-b of the New York State Labor Law.

(e) Management Commitment and Employee Involvement

(1) Workplace Violence Policy Statement:

The employer shall develop and implement a written policy statement on the employer's workplace violence prevention program goals and objectives and provide for full

employee participation through an authorized employee representative.

(i) The workplace violence policy statement shall be posted where notices to employees are normally posted.

A citation shall be issued if the policy statement is not posted.

(ii) The policy statement shall briefly indicate the employer's workplace violence prevention policy and incident alert and notification policies for employees to follow in the event of a workplace violence incident.

The employer must use this document to state the employer workplace violence policy, what the employer deems as violence, how to report an incident and the "Supervisor" designated to take complaints or the procedure to follow in submitting complaints in lieu of designating a specific supervisor.

This document must also outline the level and manner of participation of the authorized employee representative desired by the employer. The employer must at a minimum provide for AER participation in the risk assessment, in the preparation of the written program and participate in the annual record review.

A citation shall be issued for any missing elements.

(2) The responsibility and authority for preparing, determining the content of and implementing the requirements of this part remains with the employer. Local governments and all other public employers may elect to share resources in the development and implementation of their workplace violence prevention programs.

This paragraph makes it clear that although we are requiring employee participation the ultimate responsibility for compliance stays with the employer. It must be noted that this section does not give the employee representative veto power.

This provision of the rule must be in place by May 29, 2009

(f) Risk Evaluation and Determination

(1) Record Examination:

The employer shall examine any records relevant to the purposes of this Part in its possession, including records compiled in the previous year under Labor Law Section 27a, that concern workplace violence incidents to identify patterns in the type and cause of injuries. The examination shall look to identify patterns of injuries

in particular areas of the workplace or incidents which involve specific operations or specific individuals.

In the initial assessment it's possible that the only records to review are workers comp and those required by 27a. After the program is implemented the employer must have the appropriate records as required by Paragraph (g) (2) (V.)

In the mental health field (OMH, OMRDD) there will be a number of documents that are kept under the Safe and Therapeutic Environment Program both have developed. These records must be included in the initial records review.

(2) Administrative Risk Factors

The employer shall assess relevant policies, work practices, and work procedures that may impact the risk of workplace violence.

This review should look at appropriate staffing for hazardous work areas such as Psychiatric wards and emergency rooms in hospitals or other workplaces where Security Officers or minimum staffing levels are part of the safety program. Identify when policy enforcement is a part of the safety program (jail, prisons juvenile facilities) and failure to enforce such policies encourages instances of violence.

There must also be policies on how employees whereabouts and safety are accounted for and what they are allowed to do alone.

Visitation policies may also be relevant.

In high risk settings, policies relevant to the care and treatment of client, patients and inmates may be part of the risk evaluation.

In cases where administrative controls are instituted as measures to mitigate the risk of violence they must be made part of the written program.

(3) Evaluation of Physical Environment

The employer, with the participation of the authorized employee representatives, shall evaluate the workplace to determine the presence of factors which may place employees at risk of workplace violence. The Department of Labor has tools to aid employers in performing this evaluation which will be posted on the Department's website.

Factors which might place an employee at risk include but are not limited to:

(i) Working in public settings (e.g. Social Service Workers, Police Officers, Firefighters, Teachers, Public Transportation Drivers, Health Care Workers, other Governmental Workers or Service Workers);

(ii) Working late night or early morning hours;

(iii) Exchanging money with the public;

- (iv) Working alone or in small numbers;
- (v) Working in a location with uncontrolled public access to the workplace; or
- (vi) Areas of previous security problems.

After evaluation of the records a physical walkthrough must occur with the employee reps, paying particular attention to areas where records have indicated problems and try to identify why they were problem areas. Results of the walk around must be recorded. Tools and the means to capture finding must be in the employer's description in the written program of how the physical walkthrough will be documented.

All worksites must be examined, a sampling is not acceptable.

A citation written under Section (f) (3) must be issued if the workplace examination did not include the authorized employee representatives.

The workplace examination must be completed by June 29, 2009.

- (g) The Workplace Violence Prevention Program
 - (1) Employers with 20 or more full time permanent employees, with the participation of the authorized employee representative, shall develop a written workplace violence prevention program.

While exempted from the requirement for a written program having less than 20 employees does not exempt the employer from the other requirements, they just don't need to be written.

Volunteer Fire Departments that are not part of a village or city would not be considered to have any full time employees. A volunteer department of a city or village will be included if the total number of full time employees employed by the city or village exceeds 20.

Such participation shall include soliciting input from the authorized employee representative as to those situations in the workplace that pose a threat of workplace violence, and on the workplace violence prevention program the employer intends to implement under these regulations.

The Policy Statement must outline the level of participation the employee reps will have. Performing the record review, workplace examination and writing the written program and then handing it to the employee reps is not participation.

Soliciting input from authorized employee representatives may be in any form such as meetings, questionnaires, committees etc, but must be outlined in the policy statement.

Safety and health programs developed and implemented to meet other federal, state or local regulations, laws or ordinances are considered acceptable in meeting this

requirement if those programs cover or are modified to cover the topics required in this paragraph. An additional or separate safety and health program is not required by this paragraph.

This paragraph makes it clear that if an employer has a program that covers the required topics there is no requirement to duplicate it.

For example State Agencies are required by executive order to develop and implement a domestic violence program. It would be acceptable for the employer to reference and attach that program as part of the overall program.

In the mental health facilities operated by OMH and OPWDD they have a number of policies, programs and guidelines that are relevant to this section. At OMH it's known as the Safe and Therapeutic Environment Program.

(2) The workplace violence prevention program shall include the following:

(i) A list of the risk factors identified in the workplace examination;

(ii) The methods the employer will use to prevent the incidence of workplace violence incidents;

(iii) A hierarchy of controls to which the program shall adhere as follows: engineering controls, work practice controls, and finally personal protective equipment;

Following standard safety and health protocols we will require that hazards be engineered out of the workplace rather than work procedures or PPE. Where physical barriers are feasible they must be added. Windows for interviews, extra doors for offices when indicated. Deep counters for service stations like DMV or tax collection. Introduction of work practice controls and/or PPE where an engineering control is more protective will be cited under this paragraph.

(iv) The methods and means by which the employer shall address each specific hazard identified in the workplace evaluation;

Each specific hazard identified in the Risk Evaluation must be addressed specifically. The employer may group like hazards such as requiring that all service counters must be 48" deep to address the hazard of being in reach of a client, provided that the same engineering control will be implemented for every counter in the facility. Generic statements such as "Supervisors will implement controls as appropriate" is not responsive to specific hazards identified.

Failure to address specific hazards will be cited under this paragraph.

Some hazards can be addressed immediately others may require intermediate and long term planning such as budget and capitol approvals. The inspector shall discuss these needs at the closing conference and consult with The District Supervisor when an employer makes a demand for longer than usual abatement periods.

(v) A system designed and implemented by the employer to report any workplace violence incidents that occur in the

workplace. The reports must be in writing and maintained for the annual program review;

Employers must provide a system for collecting reports about workplace violence incidents in the workplace. Reporting of incidents by employees is mandatory. This section should be cited if the employer does not make such reporting mandatory or in any way discourages an employee from reporting.

(vi) A written outline or lesson plan for employee program training;

(vii) A plan for program review and update on at least an annual basis. Such review and update shall set forth any mitigating steps taken in response to any incident of workplace violence.

This review plan must be specific and include the participation of the AER.

(viii) Nothing in this part shall require the disclosure of information otherwise kept confidential for security reasons. Such information may include information which, if disclosed:

(a) Would interfere with law enforcement investigations or judicial proceedings;

(b) Would deprive a person of a right to a fair trial or impartial adjudication;

(c) Would identify a confidential source or disclose confidential information relating to a criminal investigation;

(d) Would reveal criminal investigative techniques or procedures, except routine techniques and procedures; or

(e) Would endanger the life or safety of any person.

The conditions for withholding information for security reasons are basically the criteria for withholding records under the Freedom of Information Act.

Counsel felt that these terms have been well litigated and have a lot of judicial interpretations on the record. When an employer uses this exception the case file should well document the reason why and any reasoning the employer gives.

Where the Inspector or Hygienist believes that the employer has withheld records improperly the District Supervisor shall be consulted.

(h) Employee Information and Training

(1) Upon completion of the workplace violence prevention program, every employer shall provide each employee with information and training on the risks of workplace violence in their workplace or workplaces at the time of

the employee's initial assignment and at least annually thereafter.

Such information as necessary shall be provided to affected employees whenever significant changes are made to the workplace violence program. At a minimum training shall address the following:

(i) Employers shall inform employees of the requirements of this Part and the risk factors in their workplace that were identified in the risk evaluation and determination, except that nothing in this part shall require the disclosure of the information otherwise kept confidential for security reasons as identified in paragraph

(g)(2)(viii).

(ii) Employers shall inform employees of the measures that employees can take to protect themselves from the identified risks including specific procedures that the employer has implemented to protect employees such as incident alert and notification procedures, appropriate work practices, emergency procedures, and use of security alarms and other devices;

(iii) Employers with 20 or more full-time permanent employees shall inform employees of the location of the written workplace violence program and how to obtain a copy, and shall make it available for reference to employees, authorized employee representatives and the Commissioner in the work area during the regularly scheduled shift.

The training program must be comprehensive and identify the actions the employer has taken to address hazards that were identified in the risk assessment. The training each employee receives must be specific to the risk identified for that employees work. Generic training which does not direct employees in how to protect themselves from specific risks inherent in their work are to be cited.

Inspection shall include a review of the training outline and comparing it to the risk assessment and program. Mitigation activities which are not addressed in the training shall be cited.

Additionally any substantial change to the written program must be communicated to employees immediately. Inspection must determine that employees are aware of the hazards and selected mitigation methods through interviews with both employees and the AER. Inspection should include training records to assure each employee received the training upon initial assignment and annually thereafter. Initial assignment means before the employee starts work.

(i) Recordkeeping and Recording of Workplace Violence Incidents

(1) Employers shall establish and implement reporting systems for incidents of workplace violence.

Reporting systems developed and implemented to meet other federal state or local regulations, laws or ordinances are considered acceptable in meeting this requirement if they cover or are modified to cover the information required in this paragraph. An additional or separate reporting system is not required by this paragraph.

Existing reporting programs which meet the requirements of this paragraph are acceptable.

(2) Employers at sites where there is a developing pattern of workplace violence incidents which may involve criminal conduct or a serious injury shall attempt to develop a protocol with the District Attorney or Police to insure that violent crimes committed against employees in the workplace are promptly investigated and appropriately prosecuted. The employer shall provide information on such protocols and contact

information to employees who wish to file a criminal complaint after a workplace violence incident.

In many areas the local police and prosecutorial authorities are reluctant to arrest individuals who are in a facility for those with mental problems. They may feel that these individuals are hospitalized by order of a court and that they don't know right from wrong. There are many cases of assault on employees where the patient is capable of understanding that his actions are wrong. This section simply asks the employer to make the contact with local police and prosecutors and develop a protocol as to how these cases may be handled and then make the employees aware. In cases where the employer's attempt at contact is rebuffed they have satisfied the rule.

(3) Systems for reporting instances of workplace violence.

(i) The employer shall develop and maintain a Workplace Violence Incident Report that can be in any format but, at a minimum, shall contain the following relating to the incident being reported:

- (a) Workplace location where incident occurred;
- (b) Time of day/ shift when incident occurred;
- (c) A detailed description of the incident, including events leading up to the incident and how the incident ended;
- (d) Names and job titles of involved employees;

(e) Name or other identifier of other individual(s) involved;

(f) Nature and extent of injuries arising from the incident; and

(g) Names of witnesses.

(ii)

(a) If the case is a "privacy concern case" as defined below, the employer shall still be liable for developing a Workplace Violence Incident Report as set forth above. However, before sharing a copy of such Report with any party other than the Commissioner, the employer shall remove the name of the employee who was the victim of the workplace violence and shall instead enter "PRIVACY CONCERN CASE" in the space normally used for the employee's name.

(b) The employer shall treat incidents involving the following injuries or illnesses as privacy concern cases:

(1) An injury or illness to an intimate body part or the reproductive system;

(2) An injury or illness resulting from a sexual assault;

- (3) Mental illness;
- (4) HIV infection;
- (5) Needle stick injuries and cuts from sharp objects that are or may be contaminated with another person's blood or other potentially infectious material; and
- (6) Other injuries or illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the Report.

With the exception that we added injuries, the privacy concern policy is identical to Part 801. The employer must have a copy in his files which includes the name and PESH is entitled to review the copy.

(4) The Workplace Violence Incident Report must be maintained for use in annual program review and updates. This requirement does not relieve an employer of the recordkeeping requirements of 12NYCRR Part 801.

(5) The employer, with the participation of the authorized employee representative, shall conduct a review of the Workplace Violence Incident Reports at least annually to identify trends in the types of

incidents in the workplace and review of the effectiveness of the mitigating actions taken.

The review of the WPV incident reports must be accomplished with the participation of the AER. The written program must provide for this and the policy statement must state how it will be accomplished so that it provides full AER participation. The Workplace violence prevention program must be complete by July 14, 2009

(j) Employee Reporting of Workplace Violence Prevention Concerns or Incidents ***(Complaint procedures)***

The process below must be followed by an employee or AER to file a complaint with the Commissioner. Employers written programs which specify that immediate verbal notice be given in routine discovery of workplace violence issues are acceptable and encouraged. The employer must outline those procedures in the policy statement. The written complaint to the employer is only necessary when the employee wishes to file a complaint with the commissioner.

(1) Any employee or his or her authorized employee representative who believes that a serious violation of the employer's workplace violence protection program exists, or that a workplace violence imminent danger exists, shall bring such matter to the attention of a supervisor in the form of a written notice and shall

afford the employer a reasonable opportunity to correct such activity, policy or practice.

The complaint procedures are different than in the PESH Act. Employees must provide a written notice to a supervisor and then allow a reasonable period of time for correction. The condition that the employee brings to the supervisors attention must be a serious violation of the program as defined in the definitions at (d) (8) (a&b) or imminent danger.

The Supervisor served with written notice should be the Supervisor or process and procedure identified in the policy statement as that individual defined in paragraph (d) (9)

(2) Written notice to an employer shall not be required where workplace violence imminent danger exists to the safety of a specific employee or to the general health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

Imminent Danger is also defined. Going around the supervisor and complaining directly to the Commissioner must involve imminent danger as defined in this rule. Staff must exercise their professional judgment in gathering enough information to determine actual imminent danger. In some cases the employee should be advised to call law enforcement as well as PESH.

If imminent danger appears to be involved the procedure in the PESH FOM must be followed.

If employees can produce documentation that past valid complaints involving "Serious Violations" have been ignored by the employer they may then file a complaint

directly with the commissioner. The employee should be requested to send copies of the previous complaints along with the PESH Complaint or provide some other evidence that they believe in Good Faith that nothing will be done if they do report it.

Staff taking complaints must exercise sound professional judgment in these cases.

In cases where a complaint is taken under Paragraph (j)(2) the employer may try to deny us entry alleging that he was not given notice.

In complaints where prior notice has been provided by employees or their representatives, evidence of such prior notice must be obtained and examined for willfulness. Where justified violations must be classified as willful.

All gathered information must be documented in the Case File. These complaints will be the subject of IBA cases once PESH starts enforcement.

(3) If, following a referral of such matter to the employee's supervisor and after a reasonable opportunity to correct such activity, policy or practice, the matter has not been resolved and the employee or the authorized employee representative still believes that a serious violation of a workplace violence prevention program remains or that an imminent danger exists, such employee may request an inspection by notifying the Commissioner of Labor of the alleged violation. Such notice and request shall be in writing, shall set forth with

reasonable particularity the ground(s) for the notice and shall be signed by such employee or their authorized employee representative. A copy of the written notice shall be provided by the Commissioner to the employer or the person in charge no later than the time of inspection, except that at the request of the person giving such notice, such person's name and the names of individual employees or authorized employee representatives of employees shall be withheld. Such inspection shall be made forthwith by the Commissioner.

Once the employee has notified the Supervisor and waited a reasonable period for correction the complaint process becomes the same as the PESH complaint. Staff taking complaints must use their judgment in determining if a sufficient period of time has elapsed to give the employer adequate time to correct the alleged hazard. Ideally the time frame would be that time period we would set as an abatement date of the violation. The information obtained from the complainant should be evaluated for a willful citation if the complaint is sustained.

4) The authority of the Commissioner to inspect premises pursuant to such employee complaint shall not be limited to the alleged violation contained in such complaint. The

Commissioner may inspect any other area of the premises in which he or she has reason to believe that a serious violation of this section exists.

(5) The Commissioner may, upon his or her own initiative, conduct an inspection of any premises occupied by an employer if he or she has reason to believe that a violation of this section has occurred.

The current PESH administrative plan will be used for the enforcement of this section, including a general schedule of inspections, which provides a rational administrative basis for such inspection.

Workplace Violence programs will be reviewed during each programmed inspection. Copies should be obtained if possible. Refusal to release the program by an employer must be discussed with the supervisor who will consult with the program manager's office. It would not be unreasonable for mental, penal and correctional facilities, Police Agencies to not wish to release copies outside of their agencies if they would jeopardize the security of the facility. The Inspector still has the authority to review the procedures on site in most cases. A copy of the plan may be available from the AER.

(6) No employer shall take retaliatory action against any employee because the employee exercises any right accorded him or her by this Part.

The employer is also prohibited from taking retaliatory action against employees who exercise rights accorded by this rule. Retaliatory actions will be investigated as a PESH discrimination case. Note that retaliatory actions under this rule constitute a PESH act violation.

(k) Effective Dates

(1) The Employer's Policy Statement required by section (e) of this Part shall be completed within 30 days after the effective date of this Part. **(May 29, 2009)**

(2) The workplace risk evaluation and determination required by section (f) of this Part shall be completed within 60 days of the effective date of this Part. **(June 29, 2009)**

(3) The workplace violence prevention program required by section (g) of this Part shall be complete within 75 days of the effective date of this Part. **(July 14, 2009)**

(4) Employers shall be in compliance with the entire Part within 120 days of the effective date of this Part. **(August 27, 2009)**

Abatement dates set in the rule are reasonable dates considering that employers have had several years to develop a program since the law was passed. After August 27, 2009 all employers will be cited if not in full compliance. Supervisors must carefully review any PMA petitions to insure that reasonable requests are honored with stringent interim protective measures and defined time frames for compliance.