

Part 801
Recording and Reporting Public Employees' Occupational Injuries and Illnesses
(Statutory authority: Labor Law § 27-a)

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§ 801.0 Purpose.

This Part implements Labor Law, section 27-a, subdivision 9, which provides for recordkeeping and reporting by public employers as necessary or appropriate for enforcement of Labor Law, section 27-a, for developing information regarding the causes and prevention of occupational injuries and illnesses, and for making public periodic reports of work-related deaths, injuries and illnesses.

§ 801.1 Reserved.

§ 801.2 Reserved.

§ 801.3 Reserved.

§ 801.4 Recording criteria.

(a) Each employer required by this Part to keep records of fatalities, injuries, and illnesses must record each fatality, injury and illness that:

(1) is work-related; and

(2) is a new case; and

(3) meets one or more of the general recording criteria of section 801.7 or the application to specific cases of sections 801.8 through 801.12.

§ 801.5 Determination of work-relatedness.

(a) The Employer must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, subject to certain restrictions set forth in section 901.5 of SH901 Instructions for Recording and Reporting Public Employees' Occupational Injuries and Illnesses and accompanying Forms SH900, SH90.1 and SH900.2.

§ 801.6 Determination of new cases.

(a) The employer must consider an injury or illness to be a "new case" if:

(1) the employee has not previously experienced a recorded injury or illness of the same type that affects the same part of the body; or

(2) the employee previously experienced a recorded injury or illness of the same type that affected the same part of the body but had recovered completely (all signs and symptoms had disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear.

§ 801.7 General recording criteria.

(a) The employer must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. The employer must also consider a case to meet the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

§ 801.8 Recording criteria for needlesticks and sharps injuries.

(a) The employer must record all work-related needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (as defined by 29 CFR 1910.1030). The employer must enter the case on the SH 900 Log as an injury. To protect the employee's privacy, the employer must treat needlestick injuries and cuts from sharp objects that are contaminated with another person's blood, or other potentially infectious material, as a "Privacy Concern Case" as defined in section 801.29 (b) and (c).

§ 801.9 Recording criteria for cases involving medical removal under PESH standards.

(a) If an employee is medically removed under the medical surveillance requirements of a PESH standard, the employer must record the case on the SH 900 Log.

§ 801.10 Recording criteria for cases involving occupational hearing loss.

(a) If an employee's hearing test (audiogram) reveals that the employee has experienced a work related Standard Threshold Shift (STS), as defined in the instructions, and the employee's total hearing level is 25 decibels (dB) or more above the audiometric zero (averaged at 2000, 3000, and 4000 Hz) in the same ear(s) as the STS, the employer must record the case on the SH 900 Log.

§ 801.11 Recording criteria for work-related tuberculosis cases.

(a) If any of the employer's employees has been occupationally exposed to anyone with a known case of active tuberculosis (TB), and that employee subsequently develops a tuberculosis infection, as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional, the employer must record the case on the SH 900 Log by checking the "respiratory condition" column.

§ 801.12

Historical Note

Sec. Repealed, filed Dec. 24,2003, eff. Jan. 14, 2004.

§ 801.13 to § 801.28 Reserved.

§ 801.29 Forms.

(a) The employer must use SH 900, SH 900.1, and SH 900.2 forms, or equivalent forms, and associated instructions, for recordable injuries and illnesses. The SH 900 form is called the Log of Work-Related Injuries and Illnesses, the SH 900.1 is the Annual Summary of Work-Related Injuries and Illnesses, and the SH 900.2 form is called the Injury and Illness Incident Report.

(b) If the case is to be considered a "privacy concern case," the employer may not enter the employee's name on the SH 900 Log. Instead, the employer must enter "privacy case" in the space normally used for the employee's name. This will protect the privacy of the injured or ill employee when another employee, a former employee, or an authorized employee representative is provided access to the SH 900 Log under section 801.35. The employer must keep a separate, confidential list (the Privacy Case List) of the case numbers and employee names for the employer's privacy concern cases so the employer can update the cases and provide the information to the government if asked to do so.

(c) The employer must consider the following injuries or illnesses to be 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 illnesses;
- (4) HIV infection, hepatitis, or tuberculosis;
- (5) needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (see 801.7 for definitions); and
- (6) other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the log. Effective January 1, 2004, musculoskeletal disorders (MSDs) are not considered privacy concern cases.

This is a complete list of all injuries and illnesses considered privacy concern cases. No other types of injuries or illnesses may be classified as privacy concern cases.

§ 801.30 Multiple establishments.

(a) The employer must keep a separate SH 900 Log for each establishment that is expected to be in operation for one year or longer.

§ 801.31 Covered employees.

(a) The employer must record on the SH 900 Log the recordable injuries and illnesses of all employees on the employer's payroll, whether they are labor, executive, hourly, salary, part-time, seasonal, or other workers. The employer also must record the recordable injuries and illnesses that occur to employees who are not on the employer's payroll if the employer supervises these employees on a day-to-day basis.

§ 801.32 Annual Summary.

- (a) At the end of each calendar year, the employer must:
- (1) review the SH 900 Log to verify that the entries are complete and accurate, and correct any deficiencies identified;
 - (2) create an annual summary of injuries and illnesses recorded on the SH 900 Log;
 - (3) certify the summary; and
 - (4) post the annual summary, for the previous calendar year, from February 1 through April 30 each year.

§ 801.33 Retention and updating.

(a) The employer must save the SH 900 Log, the privacy case list (if one exists), the annual summary, and the SH 900.2 Incident Report forms for five (5) years following the end of the calendar year that these records cover.

§ 801.34 Reserved.

§ 801.35 Employee involvement.

(a) The employer's employees and their representatives must be involved in the recordkeeping system in the following ways:

- (1) the employer must inform each employee of how he or she is to report an injury or illness to the employer;
- (2) the employer must provide limited access to its injury and illness records for its employees and their representatives by:

(i) When an employee, former employee, personal representative, or authorized employee representative asks for copies of the employer's current or stored SH 900 Log(s) for an establishment the employee or former employee has worked in, the employer must give the requester a copy of the relevant SH 900 Log(s) by the end of the next business day.

(ii) The employer must leave the names on the SH 900 Log. However, to protect the privacy of injured and ill employees, the employer may not record the employee's name on the SH 900 Log for certain "privacy concern cases," as specified in 801.29 (b) and 801.29 (c).

(iii) When an employee, former employee, or personal representative asks for a copy of the SH 900.2 Incident Report describing an injury or illness to that employee or former employee, the employer must give the requester a copy of the SH 900.2 Incident Report containing that information by the end of the next business day.

(iv) When an authorized employee representative asks for a copies of the SH 900.2 Incident Reports for an establishment where the agent represents employees under a collective bargaining agreement, the employer must give copies of those forms to the authorized employee representative within 7 calendar days. The employer is only required to give the authorized employee representative information from the SH 900.2 Incident Report section titled "Information about the case." The employer must remove all other information from the copy of the SH 900.2 Incident Report or the equivalent substitute form that the employer gives to the authorized employee representative.

(v) The employer may not charge for these copies the first time they are provided. However, if one of the designated persons asks for additional copies, the employer may assess a reasonable charge for retrieving and copying the records.

§ 801.36 Reserved.

§ 801.37 Reserved.

§ 801.38 Reserved.

§ 801.39 Reporting fatalities and multiple hospitalization incidents to PESH.

(a) Within eight (8) hours after the death of any employee in the work environment, regardless of the cause, or the in-patient hospitalization of two (2) or more employees as a result of a work-related incident, the employer must orally report the fatality/multiple hospitalization by telephone or in person to the nearest office of the New York State Department of Labor, Division of Safety and Health (DOSHS).

§ 801.40 Providing records to government representatives.

(a) When an authorized government representative asks for the records the employer keeps under Part 801, the employer must provide copies of the records within four (4) business hours, regardless of where the records are maintained. The government representative authorized to receive the records is a representative of the Commissioner of Labor of the State of New York, conducting an inspection or investigation under State Labor Law.

§ 801.41 Annual DOSHS injury and illness survey.

(a) If the employer receives the DOSHS annual survey form, the employer must fill it out and send it to DOSHS or the DOSHS designee, as stated on the survey form. The employer must report the following information for the year described on the form:

- (1) the number of workers employed;
- (2) the number of hours worked by employees;
- (3) the requested information from the records that the employer keeps under Part 801.

§ 801.42 Requests from the Bureau of Labor Statistics for data..

(a) If the employer receives a Survey of Occupational Injuries and Illnesses Form from the Bureau of Labor Statistics (BLS), or a BLS designee, the employer must promptly complete the form and return it following the instructions contained on the survey form.

§ 801.43 Reserved.

§ 801.44 Retention and updating of old forms.

(a) The employer must save his or her copies of the SH 900 and, to the extent used as an illness and injury report, C2, forms for five years following the year to which they relate and continue to provide access to the data as required in the Part. The employer is not required to update old DOSH 900 and C2 forms.

§ 801.45 Reserved.

§ 801.46 Definitions.

As used in this Part:

(a) *Establishment.* An establishment is a single physical location where services, operations or other activities are performed. For activities where employees do not work at a single physical location, such as construction; transportation; electric, and sanitary services; and similar operations, the establishment is represented by main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities. An establishment may include more than one physical location provided:

- (1) the employer operates the locations as a single operation under common management;
- (2) the locations are all located in close proximity to each other;

(3) the employer keeps one set of records for the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

(b) *Injury or illness.* An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. (Note: Injuries and illnesses are recordable only if they are new, work-related cases that meet one or more of the section 801.4- 801.12 recording criteria.)

(c) *Physician or Other Licensed Health Care Professional.* A physician or other licensed health care professional is an individual who meets the definition for such a professional under the New York State Education Law.

(d) *Work environment.* The work environment is an establishment or other locations where one or more employees are working or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of his or her work.

(e) *Employer.* Any State, any political subdivision of the State, a public authority or any other governmental agency or instrumentality thereof is an employer within the meaning of this Part.

(f) *Public employee.* Any employee of the State, any political subdivision of the State, a public authority or any other governmental agency or instrumentality is a public employee within the meaning of this Part.

§ 801.47 Posters for Public Employees.

(a) Each employer shall post and keep posted in each establishment a poster providing information relating to the job safety and health protection afforded to public employees by the provisions of Labor Law, section 27-a. These posters may be obtained from the New York State Department of Labor, Division of Safety and Health. A poster for each establishment shall be posted in a conspicuous place or places where notices to employees of that establishment are customarily posted, and the employer shall take steps to insure that the posters are not altered, defaced, or covered by other material.