

**COMPULSORY WORKPLACE SAFETY AND LOSS PREVENTION PROGRAM
FREQUENTLY ASKED QUESTIONS
INDUSTRIAL CODE RULE 59**

Why did my business receive a notice that says it must take part in the Workplace Safety and Loss Prevention Program?

Section 134 of the Workers' Compensation law established a Compulsory Workplace Safety and Loss Prevention Program. Your business must take part in this program if your:

- Annual payroll is in excess of \$800,000, *and*
- Most recent experience modification rating exceeds 1.20.

You will get a notice from the New York Compensation Insurance Rating Board (NYCIRB) if you are subject to the program.

How is my experience modification rate determined?

The NYCIRB sets rates. It compares three years of your loss experience to the average of all employers in the same business class. How your business compares to the average sets your rating. They use New York State payroll and losses only. Interstate modifications issued by the National Council on Compensation Insurance (NCCI) for multi-state employers cannot substitute for experience ratings calculated by NYCIRB.

Can I appeal a notice from NYCIRB?

An employer should contact their insurance carrier if they feel any information that NYCIRB used to calculate the experience modification rate or payroll is incorrect. The insurance carrier should then approach NYCIRB and ask for a review of the data submitted. Companies will most likely be removed from the compulsory program if payroll or losses for the calculation years are incorrect or if the employer has gone out of business or switched to a self-insurance program. NYCIRB will send the DOL a notice amending the original notification.

If you switch to self insurance, your business will only be removed from this program if the switch occurred before the notice was issued.

What do I have to do once I have received a notice from NYCIRB?

You must set up a consultation and evaluation by a Safety and Loss Consultant. You must do this within 30 days of receiving the notice. You must notify your insurer and the DOL of the name, address and certification number of the consultant you have hired, within 10 days of setting up the consultation. Include the dates the consultation is supposed to begin and end. The consultation must be finished and the consultant's report received within 75 days of the notice.

You must provide your insurer and the DOL with a copy of the evaluation report within 30 days of receiving it from the consultant. Include a written statement that describes how you will complete any remedial action recommended by the report. Also include the expected start and end date of that remedial action. If you plan to hire someone to provide remediation services, include the name(s) of the individual(s) and/or organization(s). The remedial action must be finished within 6 months after you receive the evaluation report.

The insurer must conduct an inspection within 60 days of the end of the 6-month period. They will assess whether the recommended remedial action has been taken. The insurer must give a copy of its inspection report to you and the DOL within 45 days of the re-inspection.

Who can I hire to do the consultation and evaluation required by the Compulsory Workplace Safety and Loss Prevention Program?

You must use a consultant who has been certified by the DOL. A list of certified consultants is available on the DOL website at:

<https://applications.labor.ny.gov/WSLPIPspecialistSearch/specialistSearch.faces>

Your insurer may have certified consultants on staff who perform these services for their clients.

What is the likely cost of a consultation and evaluation:

Private safety consultants may calculate and charge their own fees to perform a consultation and evaluation. The DOL does not control the fees set by private consultants.

Can I appeal the timeframes for notifying the DOL or scheduling a consultation?

There are no provisions to formally appeal the prescribed timeframes. You should make every effort to document your attempts to meet them. Contact the DOL if there are extenuating circumstances.

What is the penalty for non-compliance?

There is a penalty if you fail to:

- Arrange for a consultation and evaluation,
- Take the remedial action recommended by your consultant's report, or
- Fail to meet the deadlines.

You must take these actions within the proper timeframes. The penalty is a 5% surcharge to your manual rate premium for the next policy period. Your insurer will charge this to your workers' compensation insurance policy. The penalty is cumulative and increases by 5% for each year of non-compliance.

What if I disagree with the result of my insurer's re-inspection?

Your insurer may find that you have not taken the remedial action recommended in the evaluation report and notify the DOL of your non-compliance. You may appeal if you disagree. You must appeal to the DOL within 30 days of receiving your insurer's re-inspection report. You must notify your insurer of the appeal. DOL is responsible for settling these disputes. Our decision will be binding on all parties.

What happens once I appeal a determination of non-compliance?

DOL will conduct an independent inspection. DOL's determination of compliance or non-compliance will be final. However, your appeal will not be considered if you have not paid your billed premium, including any surcharges.

For questions not answered here, please contact the DOL at the address below:

New York State Department of Labor
Workplace Safety and Loss Prevention Program
State Office Campus, Building 12, Room 168
Albany, NY 12240

E-MAIL: WSLPIP@labor.ny.gov

TEL: (518) 485-9766

FAX: (518) 457-3454

WEB: www.labor.ny.gov/WSLPIP.html