

Closing Conference

Public Employee Safety
and
Health Bureau



**New York State
Department of Labor**

Division of Safety and Health

In accordance with the Public Employee Safety and Health (PESH) Act of 1980, an inspection of your establishment was conducted by an Inspector or Hygienist of the PESH Bureau's Enforcement Unit. At the conclusion of every inspection, a closing conference to discuss the findings of the inspection is held with management and employee representatives. If no violations are found, the Inspector/Hygienist will advise you of this fact and will answer any questions you may have.

This flyer provides Information for those cases in which violations were found.

When violations have been found, the Inspector/Hygienist at the closing conference will discuss information in the following areas:

- the type of violations found, and the issuance of a **Notice of Violations and Order to Comply**,
- the abatement measures which can be taken,
- the free consultation services available through PESH,
- the approximate abatement period which will be assigned,
- what a "Petition for Modification of an Abatement Date" is and how to apply for one,
- the Appeal process available to employers,
- the availability of funding from the Hazard Abatement Board.

Types of Violations

Serious - A serious violation shall be deemed to exist, in a place of employment, if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

Nonserious - a violation that has a direct relationship to job safety and health, but is not serious in nature.

Willful - a violation in which the employer either knowingly failed to comply with a legal requirement or acted with plain indifference to employee safety.

Repeat - a repeat violation is issued to an employer who has been cited previously for a substantially similar condition.

Notice of Violation and Order to Comply

A **Notice of Violation and Order to Comply** will be issued to you; such notice will describe each violation found and list the date by which the violation must be corrected. The notice (or a copy of it) must be posted at or near each place where a violation occurred for three (3) working days or until the violation is corrected.

If you do not agree with the violations issued, you may appeal such issuance as follows:

Informal Conference - If you believe that a violation(s) is not valid, you may request an informal conference by writing to the district office which issued the notice within 20 working days (excluding weekends and State holidays) from the receipt of the notice.

Note: An informal conference may be requested to discuss methods of compliance or the abatement period.

Formal Appeal - If you wish to appeal the violation(s) issued, you may do so by filing a petition with the Industrial Board of Appeals (IBA) within 60 days of the issuance date of the Notice. Your Appeal (Petition) should be addressed to the Industrial Board of Appeals at:

**Industrial Board of Appeals
Empire State Plaza
Agency Building #2 - 20th Floor
Albany, NY 12223**

Your Petition must contain the following information (12 NYCRR §66.3):

1. Begin your Petition with the following form:

New York State
Industrial Board of Appeals

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In the Matter of the Petition of
(name of the person(s) making the appeal)

Petitioner(s),

To Review under Section 101 of the Labor Law
(state matter to be reviewed)

-against-

The Commissioner of Labor

Respondent,

-----X

2. Include the following information in the Petition: (a) the correct mailing address and telephone number of each Petitioner; (b) the location of the premises or establishment affected by the Order(s) appealed from, if that premises or establishment is different from the Petitioner's address; and (c) the name and address of any representative of the Petitioner's employees.
3. The Petition must state all facts supporting the claim that the Petitioner(s) has/have an interest in the case, unless the Petitioner(s) has/have been named in the Order(s) in question.
4. The Petition must state clearly and concisely your reasons for claiming that the Order(s) is/are invalid or unreasonable. You may not simply allege a conclusion of fact or law (for example, you may not merely say that a person named in the Order was not your employee or that you paid your employees all wages due to them). Instead, you must set forth enough facts to allow the Board to reach these conclusions on their own. Please also note that if you fail to state, in the Petition, any reason to believe that an Order(s) is invalid or unreasonable, that reason will be deemed waived and may not be argued in the future (Labor Law §101(2)).
5. The Petition must state any other material or relevant facts that you want the Board to consider.
6. The Petition must state, with particularity, the relief that you are seeking from the Board, i.e. whether you want the Order(s) to be revoked, amended or modified, and, if the latter two, exactly how you want the Order(s) to be amended or modified.
7. The Petition must be signed by the Petitioner or the Petitioner's authorized representative.
8. You must attach a copy of the Order(s) that you are appealing to the Petition.
9. You must send the original Petition and three copies to the Board.

Note: An appeal to the IBA does not relieve the obligation to correct the cited violations by the abatement date unless the employer has been granted a stay of enforcement by the Board.

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 in the review of the Employer's proposal. The Employer will submit their proposal for an alternative method of compliance to ESU who will review and then 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 follow up with an inspection to ensure the employer has complied with the alternative compliance agreement.

Complying Violations

You must correct the violations cited in the notice by the abatement date listed. Once you have corrected all violations issued, complete the **Certification - Status of Pending Orders** form which was mailed to you with the notice.

If you are unable to correct a violation(s) because of the unavailability of professional or technical personnel, or of the materials and equipment needed to come into compliance, you may apply, no later than the day following the abatement date, for a **Petition to Modify an Abatement Date (PMA)** to extend the abatement date. In addition, in order to qualify for a PMA, you must be able to prove that all available steps are being taken to protect the employees exposed to the hazard cited and to institute an effective program for coming into compliance as quickly as possible. Further information on a PMA, can be obtained from the district office which issued the Notice.

Follow-Up Inspections

A compliance inspection will be conducted to determine if the violations listed on the Notice have been corrected. If this follow-up inspection shows that violations have not been abated by the date assigned, a **Notification of Failure to Abate Violations and Order to Comply (FTA Notice)** will be issued. The FTA Notice will list a *Per Day Penalty Assessment For Each Violation* which had not been corrected by its abatement date. Such penalty will be assessed daily until the violation(s) is complied. The penalty for a nonserious violation is up to **\$50** per day; the penalty for a serious violation is up to **\$200** per day.

Formal Appeal - If you wish to appeal the finding of the revisit to the inspection site or the amount of the per day penalty, you may do so by filing a petition with the Industrial Board of Appeals (IBA) within 60 days of the issuance of the FTA Notice. A petition may be filed with the Board which is located at Empire State Plaza, Agency Building 2, 20th Floor, Albany, NY 12223.

Assistance Available

Consultation Services - The PESH Bureau's Consultation Unit includes experienced safety and health staff who are available to assist you to comply the violations listed on the **Notice of Violation and Order to Comply**. To request this **FREE** consultation service, contact the PESH district office nearest you.

Note: It is not necessary to have received a notice to request the services of a consultant. They are available to review any procedure or method used at your establishment at any time.

Hazard Abatement Boarding Funding - The Board is empowered to provide 75% reimbursement to help alleviate the cost of capital projects designed to abate hazards found by either a PESH Inspector or Consultant. Such reimbursement is available to all public employers except for State Agencies and Public Authorities created by the State. Further information may be obtained from the Board, NYS Department of Labor, Building 12, State Campus, Albany, NY 12240.

Note: An application to the Board **does not** relieve a public employer who has been issued a Notice of the obligation to correct the violations cited by the abatement date.