

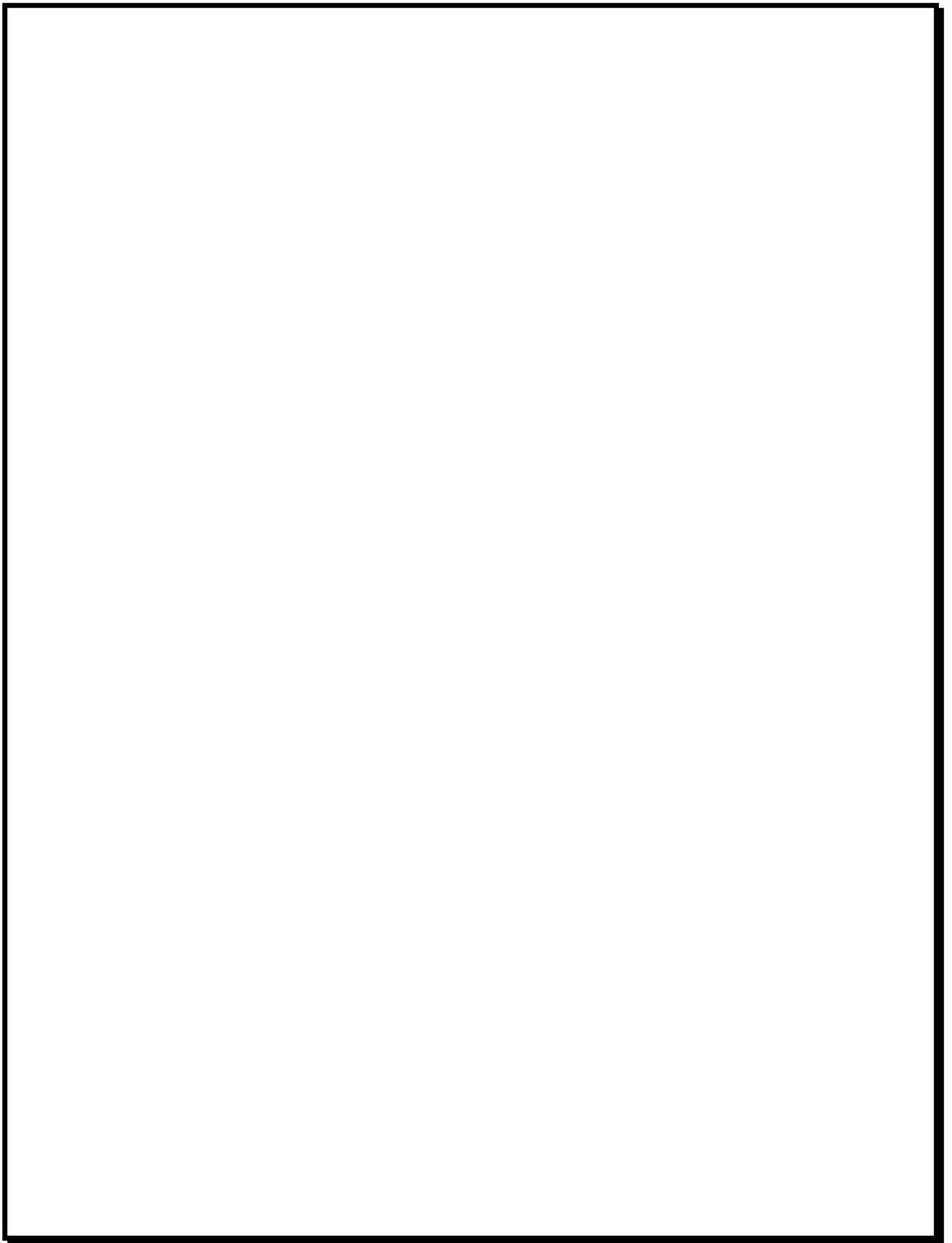
New York State
Department of Labor

Workplace Safety Program

Guide to Compliance
Workplace Safety and Loss Prevention Program
Industrial Code Rule 59



David A. Paterson, Governor
M. Patricia Smith, Commissioner



INTRODUCTION

The Workplace Safety and Loss Program was established as part of the Governor's Workers' Compensation Reform. It is intended to help employers establish a program to address the costs associated with occupational accidents and illnesses that occur in the workplace. Such accidents and illnesses are not only costly, but also waste New York State's precious human resources and cause a tremendous amount of pain and suffering to the families and friends of those workers who are injured. This compromises an employer's ability to compete in the market place and expand and create jobs.

This guide is designed for anyone with an interest in the well being of all workers across the state. By establishing an aggressive program towards safety, New York State industries can maintain and develop new technologies that will lead the nation into the 21st century.

On behalf of Governor David Paterson, I invite you to review this guide to complying with the Workplace Safety and Loss Prevention Program. Please feel free to contact me or the Division of Safety and Health if you have any comments or suggestions regarding this program.

Sincerely,

M. Patricia Smith
Commissioner of Labor

OVERVIEW

The Workplace Safety and Loss Prevention Program was created to reduce workplace injuries and lower Workers' Compensation costs for employers. Specific details of the Program can be found in Section 134 of the Workers' Compensation Law and in the Department of Labor's Code Rule 59, the "Workplace Safety and Loss Prevention Program". Both regulations can be accessed from the Department's website at: www.labor.state.ny.us.

THE NOTIFICATION

The program is required for all employers whose most recent annual payroll is in excess of \$800,000 **and** whose most recent experience rating exceeds the level of 1.2. Employers who meet these criteria are notified by the *New York Compensation Insurance Rating Board* of the need to undergo a Workplace Safety and Loss Prevention Consultation. Notifications are sent out by the Rating Board several times a year as determined by the Board. These notifications become effective on the day each employer receives the notice in the mail.

THE CONSULTATION

The consultation shall include a review of the employer's safety program, an assessment of the employer's compliance with the requirements and a hazard survey of the workplace. The consultation must be performed by either a consultant certified by the New York State Department of Labor or a NYS DOL employee assigned by the Department to conduct the required consultation. An employer may choose to have the consultation done by either a certified consultant or by a Labor Department employee. A list of consultants, certified by the Department should be enclosed with the notification sent to each employer by the Rating Board.

COMPLIANCE

At the conclusion of the consultation, the consultant will submit a written evaluation to the employer. The employer must then provide a copy to the Department of Labor and to its insurance carrier along with a statement that outlines how, when and who will provide the required remedial action. Subsequently, the insurer will conduct a compliance inspection and provide the employer and the Department of Labor with a copy of the findings. If an employer disagrees with the findings of the insurance carrier, an appeal may be made to the Department of Labor.

GENERAL GUIDELINES

The employer should contact their workers' compensation insurance carrier after receiving a notice from the Board, regardless of whether or not an insurance consultant is going to perform the required consultation. In all cases, a representative from the employer's insurance carrier must conduct a re-inspection to determine whether or not the employer is in compliance with Industrial Code Rule 59. The insurance carrier should be made aware of all actions taken by an employer and copies of all correspondence should be sent to both the insurance carrier and the Department of Labor.

The employer (or the consultant) should plot a compliance time line so as to be in position to fully understand the deadlines that must be met. A sample compliance time line, starting with the date the notification is actually received, is included in this document. After receiving a notice from the Rating Board, an employer should arrange to have a consultation conducted by a consultant certified to perform such work in the State of New York. Notice must be sent to the Department of Labor, informing the Department of the date when the consultation is scheduled to begin; the date when the consultation must be completed; the name and address of the person(s) performing the consultation service; the certification number of the consultant if the consultation is to be performed by other than a department employee. After receiving a report from a consultant, an employer should forward it to the Department of Labor with a cover letter informing the Department of what actions will be taken by the employer to comply with the specific recommendations made by the consultant.

Since Code Rule 59 sets only the amount of payroll and the experience modification rating as parameters for inclusion into the WSLP Program, a consultation (including a physical inspection) should only address areas where an employer has primary control over that workplace.

REQUESTING A CONSULTATION FROM A CONSULTANT ON THE LIST

Each consultant who has been certified by the Department of Labor may provide the necessary service under the Workplace Safety and Loss Prevention Program. An employer should review the list of consultants posted on our website and make arrangements with a specific consultant who is currently certified by our Department. Many insurance companies have several consultants certified in various locations around the state. Please contact specific consultants on this list for availability and fee requirements. Certified consultants must review at least 4 years of loss data as represented by the claims filed under the Workers' Compensation system and verify payroll and experience rating.

REQUESTING A CONSULTATION FROM THE DEPARTMENT OF LABOR

In order to have the Department of Labor conduct the consultation you must submit a request on company letterhead with an original signature in ink and the following information:

- a copy of the Compensation Rating Board Worksheet sent to an insurer, which shows the calculations of the experience modification rate, payroll information, and actual losses for the covered period
- Copies of at least 4 years of C-2's filed with Workers' Compensation Board
- a list of your New York State locations, if there are more than one.

FEES

The fee for a consultation performed by Department of Labor staff shall be \$350 per day plus any additional costs incurred during the course of the consultation. The fee includes actual on-site consultation time, travel to and from your facility, and report writing time; there may be additional costs for sampling, laboratory fees, laboratory reports, etc. Private sector consultants, certified by the Department of Labor may charge fees that are established by their respective companies or organizations. *Please note that these fees may exceed those charged by the Department of Labor. The Department of Labor does not control the amount of time to conduct a consultation, nor the fees charged by consultants who are certified to perform such services under this regulation.*

PENALTIES

If the employer does not arrange for a consultation and evaluation or fails to implement the recommended remedial action within the times prescribed, the **insurer** shall surcharge the employer's manual rate premium by five percent for the next ensuing policy period. So long as non-compliance continues there shall be an additional five percent surcharge for each year thereafter until compliance is demonstrated.

APPEAL PROCESS

An employer may appeal the insurer's determination that the work site is not in compliance with the required remedial action. Such appeal must be filed with the Department of Labor within 30 days of receipt of the insurer's inspection report; a copy of the appeal must be sent to the insurer.

The Department of Labor will conduct an inspection of the workplace and provide both the employer and insurer with a written determination that shall be binding on all parties.

THE PROCESS

Employer receives notification from New York Compensation Rating Board

Step 1: Employer immediately notifies their Workers' Compensation insurance carrier to determine if current carrier can provide required service under Workplace Safety and Loss Prevention Program.

Step 2: Within 30 days of Notice, the Employer makes arrangements to either hire a private consultation, allow insurance carrier to conduct consultation or hire NYS DOL to provide required consultation

Step 3: Within an additional 10 days, the Employer notifies the Department of Labor, in writing when the date when the consultation is scheduled to begin; the date when the consultation must be completed (that date is 75 days from the date the employer actually receives the notice in the mail) and the name and address of the consultant performing the consultation service. The certification number of the consultant if the consultation is to be performed by other than a department employee, must also be included.

Step 4: Within 75 days of the Notice, the Employer has the certified consultant conduct a consultation. The Consultant must send a report to the employer within 30 days of the closeout conference.

Step 5: The Employer must send a copy of this report to the Department of Labor within 30 days of receiving the report from the consultant and include **a letter** informing the Department of the actions the employer plans to take to comply with the recommendations issued by the certified consultant. Names of any organizations, who may help the employer comply with any recommendation, must also be included.

Step 6: The employer has 6 months from the date they receive the report to comply with all recommendations issued by the certified consultant.

Step 7: The employer must notify their current workers' compensation carrier to conduct a re-inspection of the workplace and verify compliance with all recommendations issued by the certified consultant.

Step 8: The employer's current carrier must issue a re-inspection report and send it to the Department of Labor. The employer must continuously implement and maintain the required elements of the Workplace Safety and Loss Prevention Program.

IMPORTANT ADDRESSES

COMPENSATION INSURANCE RATING BOARD

The Rating Board is responsible for determining which employers meet the criteria listed in Section 134 of the Workers' Compensation Law. Any questions on how your company was designated for inclusion in this program, should be addressed to:

New York Compensation Insurance Rating Board
200 East Forty-Second Street
New York, NY 10017
TEL: (212) 697-3535
FAX: (212) 972-1393
WEBSITE: www.nycirb.org

DEPARTMENT OF LABOR

The Department is responsible for issuing certificates to qualified consultants, conducting consultations and reviewing insurance company determinations. All notices, remedial action letters, consultation and re-inspection reports should be sent to the attention of the Program Manager at the address shown below. A list of list of consultants certified by the Department of labor is posted quarterly on the Internet.

For More Information Contact:

New York State Department of Labor
Workplace Safety Program
Building 12, Room 167
W.Averell Harriman State Campus
Albany, NY 12240
Attn: Marino J. Franchini, Program Manager

TEL: (518) 457-1125
FAX: (518) 457-1167
EMAIL: Marino.Franchini@labor.state.ny.us

CONSULTANT'S ROLE

All consultants performing workplace safety and loss prevention consultations for employers under this rule shall comply with the following:

- (a) All consultants shall include both a survey of the workplace and an assessment of the employer's workplace safety and loss prevention program in their consultation report.
- (b) For employers with more than one work site, the consultant shall consider loss and claim information by location in the same manner as he or she would do for an employer with one work site in order to identify hazards which necessitate remediation.
- (c) Wherever industrial hygiene sampling is determined to be necessary during the conduct of such consultation, the consultant shall utilize sampling and analytical procedures generally recognized within the hygiene profession, such as but not limited to the Chemical Information Manual OSHA CPL 2-2.43A. All sample analyses must be performed by a laboratory that has been accredited by the American Industrial Hygiene Association or certified by the New York State Health Department Environmental Laboratory Approval Program (ELAP).
- (d) The consultant shall include as a part of the overall consultation an opening conference with the employer and recognized employee representatives, if any, to discuss:
 - (1) The way the consultation will be conducted;
 - (2) The information and other assistance that will be required of the employer in order to allow the consultant to perform his/her function;
 - (3) The involvement of employees or employee representatives in the consultation;
 - (4) The sampling that might be required as part of the consultation as well as the sampling protocols that will be utilized.
- (e) Upon completion of the consultation, the consultant will conduct a final closing conference with the employer and with the recognized employee organization(s), if any, to discuss the consultant's findings and recommendations.
- (f) The consultant shall provide the employer with a written report at the conclusion of the consultation. The written report must be forwarded to the employer by the consultant as soon as possible following completion of the consultation but no more than thirty (30) working days from the closing conference date.

A CONSULTATION REPORT MUST INCLUDE:

1. Documentation of an opening and closing conference by consultant
2. An assessment of the employer's workplace safety and loss prevention program (Based upon C-2's or loss date)
3. A review of the frequency of in-house safety inspections (under program element #10)
4. A physical survey of the employer's workplace
5. The name and certification number of the consultant
6. Name and location of the establishment where the consultation was performed
7. The date of the consultation
8. The name of the employer, employer's insurer and contact person
9. The primary activity of the employer and a synopsis of the work operation
10. The number of employees, most recent experience modification rate, the Rating Board File Number (RBN), the Standard Industrial Classification (SIC) and Federal Employer Identification Number (FEIN)
11. A complete review and assessment of the elements of a safety and loss program
12. A description of monitoring and identification of laboratory processing
13. An identification of and recommendations for corrections of all issues or deficiencies (by employer)

EMPLOYERS' SAMPLE TIME LINE

January 1, 2008 Employer receives notice from New York Compensation Insurance Rating Board (NYCIRB).

February 1, 2008 (WITHIN 30 DAYS) of receipt of the written notice from the Compensation Insurance Rating Board, the employer must have arranged for a consultation.

February 10, 2008 (WITHIN 10 DAYS) after the consultation arrangements have been completed, the employer must provide such information - in writing - to its insurer and to the Department of Labor.

March 16, 2008 (WITHIN 75 DAYS) after receipt of the initial notice from the Rating Board, the employer must have had the inspection AND received the report from the consultant.

April 16, 2008 (WITHIN 30 DAYS) after receipt of the Consultant's report the employer must provide its insurer and the Department of Labor with a copy of the evaluation.

September 16, 2008 (WITHIN) a reasonable time period but no longer than six months after receipt of the Consultant's report the employer must implement the recommendations contained in the report.

November 16, 2008 (WITHIN 60 DAYS) after the maximum six months allotted to complete the remedial action, the insurer shall conduct an inspection of the employer's work site to evaluate compliance with the Consultant's report.

January 1, 2009 (WITHIN 45 DAYS) after the completion of the compliance inspection, the insurer shall submit a copy of the inspection report to the employer and to the Labor Department.

February 1, 2009 (WITHIN 30 DAYS) after from receipt of the insurance inspector's report, required in Section 59-1.6(b), file a notice of appeal with the Department and shall provide a copy of the appeal to the insurer.

FREQUENTLY ASKED QUESTIONS

Can an employer appeal a notice from the Compensation Rating Board?

An employer should contact their insurance carrier if they feel any information that the Board used to calculate the experience modification rate or payroll is incorrect. The insurance carrier should then approach the Board 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. The Board will send the DOL a notice amending the original notification.

What is the penalty for non-compliance?

The penalty for non-compliance is the surcharge of 5% on the employer's manual rate by the insurer upon the next policy period. The penalty is cumulative and increases by 5% for each year of non-compliance.

Can an employer appeal the time frames for notifying the Department of Labor or scheduling a consultation?

Although there are no provisions to formally appeal the time frames for notification or scheduling a consultation, an employer should make every effort to document their attempts to meet the prescribed time frames. It is better for an employer to take action even if the time frame is over the limit. Insurance carriers may choose not to evoke the 5% surcharge until the next ensuing policy period and any attempt to comply at any point in the process may help avoid future penalties.

What if an employer disagrees with an insurance carrier's determination of compliance?

The Department of labor will settle all disputes between an employer, subject to the Workplace Safety and Loss Prevention Program and the current insurance carrier.