DIVISION OF SAFETY & HEALTH

Employer Rights and Responsibilities under the

NYS Public Employee Safety and Health Act

NYS DEPARTMENT OF LABOR

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New York State's Public Employee Occupational Safety and Health Act of 1980 provides safety and health coverage to all public employees at the state and local level. The Act offers the same safety and health standards that apply to workers in the private sector (OSHA Standards) to employees in the public sector. This brochure gives you a broad view of the features of the law.

Employer Responsibilities

Under the Act, employers include the State, any political subdivision of the State, and public authorities created by the State. Each employer must furnish its employees with a job and a workplace free from recognized hazards; reasonably and adequately protect the lives, safety or health of its employees; and comply with the safety and health standards (OSHA Standards) promulgated by the Commissioner of Labor under the Act.

Standards

The law requires the Commissioner of Labor to adopt all standards promulgated under the United States Occupational Safety and Health Act.

Inspections

The Commissioner of Labor has exclusive authority to enforce the safety and health standards promulgated under the Act. An inspection can result from a complaint, an accident or as part of a regularly scheduled inspection program. Imminent danger complaint inspections receive the highest inspection priority. A representative of the employer and a representative of the employees have a right to accompany the inspector during the course of an inspection. This is known as the "walkaround."

Enforcement

If a Notice of Violation and Order to Comply is issued to an employer, it will describe the violation, refer to the standard alleged to have been violated, the type of violation (serious, non-serious, willful or repeat), and set time for compliance. When the Commissioner issues an order to comply, the employer must post it or a copy of it in a conspicuous place at or near each place of violation cited, clearly visible to affected employees. The Commissioner will also give copies of Orders to Comply to all organizations that represent employees.

Penalty Assessment

An employer that fails to correct a violation by its abatement date is subject to a PER DAY penalty assessment. We will assess a penalty of up to $50 per day for each non-serious violation, and of up to $200 per day for each serious violation, until the violations are corrected. The penalty assessed for each violation will appear in the Failure to Abate notice.

Informal Conference

An informal conference is how a Supervising Inspector of the Public Employee Safety and Health (PESH) Bureau meets with an employer, employee, or an authorized representative of the employees to discuss issues arising from an inspection and the resultant orders to comply. To request an informal conference, contact the nearest PESH district office by telephone or letter, within 20 working days from the issue date on the orders.

Judicial Enforcement

If the employer does not comply with the order by the deadline, we can take legal action pursuant to Article 78 of the Civil Practice Law and Rules.

Appeals

If an employer does not agree with an order, they may appeal to the Industrial Board of Appeals within 60 days. The appeal should be addressed to the Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Floor, Albany NY, 12223. If an employer or an employee is dissatisfied with a decision of the Industrial Board of Appeals, either may begin a proceeding according to Article 78 of the Civil Practice Law and Rules, within 60 days after the Board's decision.

Alternative Compliance Agreement

If the Public Employer proposes an alternative method of compliance, PESH may enter into an alternative compliance agreement. PESH will ask 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 alternative 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. They will write up the results of this meeting into an alternative compliance agreement agreed to by all parties. PESH will conduct a follow-up inspection to ensure the employer has complied with the alternative compliance agreement.

Injunctions

When inspectors observe a situation that may present an imminent danger of serious physical harm or death to an employee, they must notify the employees involved and the employer, and request immediate corrective action. If the employer concurs with the inspector and acts to remove the imminent danger, no injunction is necessary. If the employer does not concur and refuses act on the danger, the inspector will advise both parties that the Commissioner of Labor will take legal action to alleviate the situation. In such situations, the Commissioner must seek an injunction within 48 hours. In the event that the Commissioner fails to take action, any person affected by the situation may pursue an injunction.

Consultation

The Public Employee Safety and Health Bureau staff includes experienced safety and health consultants. They are available, upon request, to any employer for guidance on safety and health matters. The consultant will review the employer's premises and operations to see if they comply with the safety and health standards in effect. These findings will not be orders to comply but will be recommendations to the employer. Such recommendations may become a public document and be released upon request.

Petition to Modify an Abatement Date

If the employer is unable to correct a violation because of unavailability of professional or technical personnel, or of materials and equipment needed to come into compliance, they may apply for a Petition to Modify an Abatement Date. The employer must prove they are taking all available steps to protect the employees exposed to the hazard and are instituting an effective program to achieve compliance as quickly as possible.

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Variances

An employer may request permanent variances from a standard promulgated under the Act. They must give employees notice of each application and the opportunity to participate in a hearing.

The Commissioner may issue a permanent variance after due process, including a hearing, if evidence shows that the conditions, practices, means, methods, operations or processes used or proposed by the employer are as safe and healthful as those if the employer complied with the standard.
The employer, employee or employee representative or the Commissioner may apply to modify or revoke a permanent variance at any time after six months from its issuance.

An employer may apply for a temporary variance from a newly promulgated standard if they cannot comply by the effective date because of the unavailability of materials, equipment or technical personnel.

Recordkeeping

Part 801 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York specifies the recordkeeping requirements established by the Commissioner of Labor under Section 27-a of the Labor Law. Contact one of the offices listed on this brochure for a copy.

Discrimination

No employer may discharge or otherwise discipline or in any manner discriminate against any person because the employee has filed a complaint or started any proceeding under or related to this program.

Employees who think they are being discriminated against may file a complaint with the Commissioner of Labor. The Commissioner must investigate the allegation and make a determination.

Funding Assistance Available

Under the terms of the Act, the New York State Occupational Safety and Health Hazard Abatement Board can help alleviate the cost of capital projects to abate occupational safety and health hazards cited by a PESH inspector or identified in a report of a PESH consultant. Public employers, except for State Agencies and public authorities created by the State, may apply for 75 percent reimbursement under this program. However, the public employer must correct, by a variance or other means, any cited violation by the abatement date.

For more information contact the Secretary to the Board, NYS Department of Labor, Bldg. 12, Rm. 166, State Office Campus, Albany NY 12240. Telephone (518) 457-7629.

For additional information, contact the nearest district office:

ALBANY DISTRICT
State Office Campus,
Bldg. 12, Rm.158
Albany, NY 12240
Tel: (518) 457-5508

BINGHAMTON DISTRICT
44 Hawley Street, Room 901
Binghamton, NY 13901
Tel: (607) 721-8211

BUFFALO DISTRICT
65 Court Street
Buffalo, NY 14202
Tel: (716) 847-7133

GARDEN CITY
400 Oak Street
Garden City, NY 11530
Tel: (516) 228-3970

NEW YORK CITY DISTRICT
75 Varick St., 7th Floor
New York, NY 10013
Tel: (212) 775-3548

ROCHESTER DISTRICT
109 South Union St., Rm. 402
Rochester, NY 14607
Tel: (585) 258-4570

SYRACUSE DISTRICT
450 South Salina Street
Syracuse, NY 13201
Tel: (315) 479-3210

UTICA DISTRICT
207 Genesee Street
Utica, NY 13501
Tel: (315) 793-2258

WHITE PLAINS DISTRICT
120 Bloomingdale Drive
White Plains, NY 10605
Tel: (914) 997-9514

PROTECT *all Workers*
ASSIST *the Unemployed*
CONNECT *Employers and Workers*

The New York State Department of Labor is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities.

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1-800-4-NYSDOL
www.labor.ny.gov