

WE ARE YOUR DOL



Department
of Labor

EMPLOYEE RIGHTS AND RESPONSIBILITIES Under the New York State Public Employee Safety and Health Act

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

EMPLOYEE RESPONSIBILITIES

Under the Act, employees include all employees of:

- The State
- Any political subdivision of the State
- Public authorities created by the State

An employer must provide a workplace free from known hazards. The employees also have responsibilities. They must follow the OSHA safety and health standards and any other regulations that apply to their own actions and conduct on the job.

STANDARDS

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

INSPECTIONS

The Commissioner of Labor has sole authority to enforce the safety and health standards required under the Act. An inspection can result from a complaint, an accident, or part of a regularly scheduled program. We give the highest priority to imminent danger complaint inspections.

Representatives of the employer and the employees are invited to go with the inspector during an inspection. This is called a "walkaround."

ENFORCEMENT

If we issue a Notice of Violation and Order to Comply to an employer, it will:

- Describe the violation
- Refer to the standard in question
- List the type of violations (serious, non-serious, willful or repeat)
- Set a 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
- Where it is clearly visible to affected employees

The Commissioner will give copies of Orders to Comply to all organizations that represent employees.

PENALTY ASSESSMENT

We impose a PER DAY penalty assessment on an employer that fails to correct a violation by its abatement date. Until the violations are corrected, we will assess a penalty of up to:

- \$50 per day for each non-serious violation
- \$200 per day for each serious violation

We list the penalty assessed for each violation in the Failure to Abate Notice.

EMPLOYEE CONTEST

If there is a question about the notice, you have recourse. An affected employee or authorized representative may submit a notice of contest (in writing) to the Labor Department about the abatement period set in the Notice of Violation and Order to Comply.

INFORMAL CONFERENCE

If issues arise from an inspection and the orders to comply, we make arrangements for an informal conference. This is a meeting of the Supervising Inspector of the Public Employee Safety and Health (PESH) Bureau to discuss issues with an employer, employee or an authorized representative of the employees. To ask for an informal conference, contact the nearest PESH district office by phone or letter, within 20 working days from the issue date on the orders.

APPEALS

If employees do not agree with an order, they or their representative may appeal to the Industrial Board of Appeals within 60 days.

Address the appeal to:

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

If employees are dissatisfied with a decision of the Industrial Board of Appeals, they may begin a proceeding according to Article 78 of the Civil Practice Law and Rules. They must do so within 60 days after the Board's decision.

ALTERNATIVE COMPLIANCE AGREEMENT

If the Public Employer proposes a different way to comply, PESH may enter into an alternative compliance agreement. PESH will ask the Division of Safety and Health's Engineering Services Unit (ESU) to help review the employer's proposal. The employer will submit their alternative to ESU, which will review it and schedule a meeting to discuss and refine the proposal.

The Employer, affected Unions and PESH will attend that meeting. They will write up the results 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 see 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 ask for immediate corrective action.

- If the employer agrees with the inspector and acts to remove the imminent danger, no injunction is needed
- If the employer does not agree and refuses to act on the danger, the inspector will advise both parties that the Commissioner of Labor will take legal action to improve the situation
- In these cases the Commissioner must seek an injunction within 48 hours; if the Commissioner fails to take action, any person affected by the situation may do so

PETITION TO MODIFY AN ABATEMENT DATE

At times the employers cannot comply with a violation because certain needs are not available. They may apply for a Petition to Modify an Abatement Date, if they lack:

- Professional or technical personnel
- Materials and equipment needed to come into compliance
- The employers must prove they are taking all available steps to protect the employees exposed to the hazard, and must institute a program to reach compliance as quickly as possible

VARIANCES

Employers may ask for permanent variances from a standard listed under the Act. They must give employees:

- Notice of each application
- The opportunity to participate in a hearing

The Commissioner may issue a permanent variance after due process, including a hearing. The variance may be issued if evidence shows that the conditions, practices, means, methods, operations or processes used or proposed by the employer are as safe and healthful as if the employer complied with the standard.

We can modify or revoke a permanent variance upon application by the employer, employee or employee representative. The Commissioner may apply to modify or revoke a permanent variance six months after the issue date.

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

DISCRIMINATION

No employer may discharge, otherwise discipline or in any manner discriminate against any person because the employee has:

- Filed a complaint
- 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 decide on its merit.

FOR MORE INFORMATION

Call PESH at **1-844-SAFE-NYS (1-844-723-3697)**, email ask.shnypesh@labor.ny.gov