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Kathy Hochul, Governor
Roberta Reardon, Commissioner

PROPOSED REGULATORY TEXT

For additional information, see the May 1, 2024 issue of the New York State Register at:
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Sections 801.39 and 801.41 of Part 801 of Subchapter A of Chapter XI of Title 12 of the New York Codes, Rules and Regulations are repealed and new Sections 801.39 and 801.41 are adopted to read as follows:

Section 801.39 - Reporting fatalities, hospitalizations, amputations, and losses of an eye as a result of work-related incidents.

(a) Basic requirement.

(1) Within eight (8) hours after the death of any employee as a result of a work-related incident, the death of any employee in the work environment, regardless of the cause, or the in-patient hospitalization of two (2) or more employees as a result of a work-related incident, the employer must report the fatality or hospitalizations to the Department of Labor.

(2) Within twenty-four (24) hours after the in-patient hospitalization of an employee, an employee's amputation, or an employee's loss of an eye, as a result of a work-related incident, the employer must report the in-patient hospitalization, amputation, or loss of an eye to the Department of Labor.

(3) The employer must report the fatality, in-patient hospitalization, amputation, or loss of an eye using one of the following methods:

(i) By telephone or in person to the Public Employee Safety and Health (PESH) Office that is nearest to the site of the incident.

(ii) By electronic submission in a manner prescribed by the Commissioner of Labor and identified on the Department of Labor's website.

(b) Implementation.

(1) If the PESH Office is closed and thus preventing the employer from reporting, the employer must report the fatality, in-patient hospitalization, amputation, or loss of an eye in the manner prescribed by the Commissioner of Labor and identified on the Department of Labor's website.

(2) The employer must give the Department of Labor the following information for each fatality, in-patient hospitalization, amputation, or loss of an eye:

(i) the establishment name;

(ii) the location of the work-related incident;

(iii) the time of the work-related incident;

(iv) the type of reportable event (i.e., fatality, in-patient hospitalization, amputation, or loss of an eye);

(v) the number of employees who suffered the fatality, in-patient hospitalization, amputation, or loss of an eye;

- (vi) the names of the employees who suffered the fatality, in-patient hospitalization, amputation, or loss of an eye;
- (vii) the employer's contact person and their phone number; and
- (viii) a brief description of the work-related incident.

(3) If the fatality, in-patient hospitalization, amputation, or loss of an eye resulted from a motor vehicle accident that occurred in a construction work zone, the employer must report the fatality, in-patient hospitalization, amputation, or loss of an eye. If the motor vehicle accident occurred on a public street or highway, but not in a construction work zone, the employer does not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to the Department of Labor. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on the employer's injury and illness records, if the employer is required to keep such records.

(4) If the fatality, in-patient hospitalization, amputation, or loss of an eye occurred on a commercial or public transportation system such as an airplane, train, subway, or bus, the employer does not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to the Department of Labor. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on the employer's injury and illness records, if the employer is required to keep such records.

(5) The employer must report work-related fatalities or in patient hospitalizations caused by a heart attack to the Department of Labor.

(6) The employer must only report a fatality to the Department of Labor if the work-related fatality occurs within thirty (30) days of the work-related incident. For an in-

patient hospitalization, amputation, or loss of an eye, the employer must only report the event to the Department of Labor if it occurs within twenty-four (24) hours of the work-related incident. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on the employer's injury and illness records, if the employer is required to keep such records.

(7) If the employer does not immediately learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye at the time it takes place, the employer must make the report to the Department of Labor within the following time period after the fatality, in-patient hospitalization, amputation, or loss of an eye is reported to the employer or to any of the employer's agent(s): Eight (8) hours for the death of any employee as a result of a work-related incident, the death of any employee in the work environment, regardless of the cause, or the or in-patient hospitalization of two (2) or more employees as a result of a work-related incident, and twenty-four (24) hours for an in-patient hospitalization of a single employee, an amputation, or a loss of an eye as a result of a work-related incident.

(9) For the purposes of this Part, "In-patient hospitalization" is defined as a formal admission to the in-patient service of a hospital or clinic for care or treatment.

(10) The employer does not have to report an in-patient hospitalization that involves only observation or diagnostic testing. The employer must only report to the Department of Labor each in-patient hospitalization that involves care or treatment.

(11) For the purposes of this Part, an "amputation" is defined as the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or

appendage, that has been severed, cut off, amputated (either completely or partially), fingertip amputations with or without bone loss, medical amputations resulting from irreparable damage, and amputations of body parts that have since been reattached. Amputations do not include avulsions, enucleations, degloving, scalping, severed ears, or broken or chipped teeth.

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Section 801.41 - Electronic submission of Employer Identification Number (EIN) and injury and illness records.

(a) Basic requirements.

(1) Annual electronic submission of information from the Department of Labor *Summary of Work-Related Injuries and Illnesses Form SH-900.1*.

(i) If an employer had 20–249 employees at any time during the previous calendar year, and the establishment is classified in an industry listed in subdivision (d) of this section, then the employer must electronically submit information from *Summary of Work-Related Injuries and Illnesses Form SH-900.1* to the Department of Labor. This information must be submitted once a year in a manner prescribed by the Commissioner of Labor, no later than the date listed in subdivision (c) of this section of the year after the calendar year covered by the form.

(ii) If an employer had 250 or more employees at any time during the previous calendar year, and this part requires the establishment to keep records, then an employer must electronically submit information from the *Summary of Work-Related Injuries and Illnesses Form SH-900.1* to the Department of Labor. This

information must be submitted once a year in a manner prescribed by the Commissioner of Labor, no later than the date listed in subdivision (c) of this section of the year after the calendar year covered by the form.

(2) Annual electronic submission of information from the Department of Labor *Log of Work-Related Injuries and Illnesses Form SH-900* and *Injury and Illness Incident Report Form SH-900.2* by establishments with 100 or more employees in designated industries. If an employer had 100 or more employees at any time during the previous calendar year, and the establishment is classified in an industry listed in subdivision (e) of this section, then the employer must electronically submit information from the *Log of Work-Related Injuries and Illnesses Form SH-900* and *Injury and Illness Incident Report Form SH-900.2* to the Department of Labor. This information must be submitted once a year in a manner prescribed by the Commissioner, no later than the date listed in subdivision (c) of this section of the year after the calendar year covered by the forms.

(3) Electronic submission of the records located in Part 801 of this Title upon notification. Upon notification, an employer must electronically submit the requested information from their Part 801 records to the Department of Labor.

(4) Electronic submission of the Employer Identification Number (EIN). For each establishment that is subject to these reporting requirements, the employer must provide the EIN used by the establishment.

(b) Implementation.

(1) There are three categories of employers that must routinely submit information from the forms required from this section. The first category is employers with an establishment that had 20–249 employees at any time during the previous calendar year

and are classified in an industry listed in subdivision (d) of this section; establishments in this category must submit the required information from the *Summary of Work-Related Injuries and Illnesses Form SH-900.1* to the Department of Labor once a year. The second category are employers with an establishment that had 250 or more employees at any time during the previous calendar year and are required by this part to keep records; establishments in this category must submit the required information from the *Summary of Work-Related Injuries and Illnesses Form SH-900.1* to the Department of Labor once a year. The third category is employers with an establishment that had 100 or more employees at any time during the previous calendar year and are classified in an industry listed in subdivision (e) to this section; establishments in this category must also submit the required information from the *Log of Work-Related Injuries and Illnesses Form SH-900* and *Injury and Illness Incident Report Form SH-900.2* to the Department of Labor once a year, in addition to the required information from the *Summary of Work-Related Injuries and Illnesses Form SH-900.1*. Employers in these three categories must submit the required information by the date listed in subdivision (c) of this section of the year after the calendar year covered by the form (for example, 2024 for the 2023 form(s)). If an employer is not covered by any of these three categories, then the employer must submit the information to the Department of Labor only if the Department of Labor notifies them to do so for an individual data collection.

(2) Each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal, and temporary workers.

(3) OSHA will notify employers by mail if they will be required to submit information as part of an individual data collection under paragraph (3) of subdivision (a) of this section.

OSHA will also announce individual data collections through publication in the Federal Register, the OSHA newsletter, and announcements on the OSHA website. Neither OSHA nor the Department of Labor will notify employers who must routinely submit the information in accordance with paragraphs (1) and (2) of subdivision (a) of this section that their submission is due.

(4) Employers that are required to submit information under paragraphs (1) or (2) of subdivision (a) of this section, must submit the information once a year, by the date listed in subdivision (c) of this section of the year after the calendar year covered by the form (for example, 2019 for the 2018 form). Employers that are submitting information because OSHA notified the employer of an individual data collection under paragraph (3) of subdivision (a) of this section, must submit the information as specified in the notification.

(5) Employers must submit the information electronically. An employer must submit the information electronically and in the manner prescribed by the commissioner.

(6) Employers who have ownership of or control over one or more establishments required to submit information under subdivision (a) of this section may collect and electronically submit the information for the establishment(s).

(7) Employers who are required to submit information pursuant to paragraph (2) of subdivision (a) of this section are required to submit all of the information from the forms except the following:

- (i) *Log of Work-Related Injuries and Illnesses Form SH-900*: Employee name (column B).

(ii) *Injury and Illness Incident Report Form SH-900.2*: Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

(8) Employers who use numbers or codes other than an EIN to identify their establishments may use such numbers or codes as the establishment name in the submission. However, the submission must include a legal name, either as part of the establishment name or separately as the employer name, and the EIN of the establishment.

(c) Reporting dates. Employers that are required to submit under paragraphs (1) or (2) of subdivision (a) of this section must submit all of the required information by March 2 of the year after the calendar year covered by the form(s) (for example, by March 2, 2024, for the forms covering 2023).

(d) Designated Industries for electronic submission of the New York State Department of Labor *Summary of Work-Related Injuries and Illnesses Form SH-900.1*.

NAICS	Industry
11	Agriculture, Forestry, Fishing and Hunting.
22	Utilities.
23	Construction.
31–33	Manufacturing.
42	Wholesale Trade.
4413	Automotive Parts, Accessories, and Tire Stores.
4421	Furniture Stores.
4422	Home Furnishings Stores.
4441	Building Material and Supplies Dealers.
4442	Lawn and Garden Equipment and Supplies Stores.
4451	Grocery Stores.
4452	Specialty Food Stores.

4522 Department Stores.
4523 General Merchandise Stores, including Warehouse Clubs and Supercenters.
4533 Used Merchandise Stores.
4542 Vending Machine Operators.
4543 Direct Selling Establishments.
4811 Scheduled Air Transportation.
4841 General Freight Trucking.
4842 Specialized Freight Trucking.
4851 Urban Transit Systems.
4852 Interurban and Rural Bus Transportation.
4853 Taxi and Limousine Service.
4854 School and Employee Bus Transportation.
4855 Charter Bus Industry.
4859 Other Transit and Ground Passenger Transportation.
4871 Scenic and Sightseeing Transportation, Land.
4881 Support Activities for Air Transportation.
4882 Support Activities for Rail Transportation.
4883 Support Activities for Water Transportation.
4884 Support Activities for Road Transportation.
4889 Other Support Activities for Transportation.
4911 Postal Service.
4921 Couriers and Express Delivery Services.
4922 Local Messengers and Local Delivery.
4931 Warehousing and Storage.
5152 Cable and Other Subscription Programming.
5311 Lessors of Real Estate.
5321 Automotive Equipment Rental and Leasing.
5322 Consumer Goods Rental.
5323 General Rental Centers.
5617 Services to Buildings and Dwellings.
5621 Waste Collection.
5622 Waste Treatment and Disposal.
5629 Remediation and Other Waste Management Services.
6219 Other Ambulatory Health Care Services.
6221 General Medical and Surgical Hospitals.
6222 Psychiatric and Substance Abuse Hospitals.
6223 Specialty (except Psychiatric and Substance Abuse) Hospitals.
6231 Nursing Care Facilities (Skilled Nursing Facilities).
6232 Residential Intellectual and Developmental Disability, Mental Health, and Substance Abuse Facilities.

6233	Continuing Care Retirement Communities and Assisted Living Facilities for the Elderly
6239	Other Residential Care Facilities.
6242	Community Food and Housing, and Emergency and Other Relief Services.
6243	Vocational Rehabilitation Services.
7111	Performing Arts Companies.
7112	Spectator Sports.
7121	Museums, Historical Sites, and Similar Institutions.
7131	Amusement Parks and Arcades.
7132	Gambling Industries.
7211	Traveler Accommodation.
7212	RV (Recreational Vehicle) Parks and Recreational Camps.
7223	Special Food Services.
8113	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.
8123	Drycleaning and Laundry Services.

(e) Designated Industries for electronic submission of the *Log of Work-Related Injuries and Illnesses Form SH-900* and the *Injury and Illness Incident Report Form SH-900.2*.

NAICS	Industry
1111	Oilseed and Grain Farming.
1112	Vegetable and Melon Farming.
1113	Fruit and Tree Nut Farming.
1114	Greenhouse, Nursery, and Floriculture Production.
1119	Other Crop Farming.
1121	Cattle Ranching and Farming.
1122	Hog and Pig Farming.
1123	Poultry and Egg Production.
1129	Other Animal Production.
1133	Logging.
1141	Fishing.
1142	Hunting and Trapping.
1151	Support Activities for Crop Production.
1152	Support Activities for Animal Production.
1153	Support Activities for Forestry.
2213	Water, Sewage and Other Systems.
2381	Foundation, Structure, and Building Exterior Contractors.
3111	Animal Food Manufacturing.

3113 Sugar and Confectionery Product Manufacturing.
3114 Fruit and Vegetable Preserving and Specialty Food Manufacturing.
3115 Dairy Product Manufacturing.
3116 Animal Slaughtering and Processing.
3117 Seafood Product Preparation and Packaging.
3118 Bakeries and Tortilla Manufacturing.
3119 Other Food Manufacturing.
3121 Beverage Manufacturing.
3161 Leather and Hide Tanning and Finishing.
3162 Footwear Manufacturing.
3211 Sawmills and Wood Preservation.
3212 Veneer, Plywood, and Engineered Wood Product Manufacturing.
3219 Other Wood Product Manufacturing.
3261 Plastics Product Manufacturing.
3262 Rubber Product Manufacturing.
3271 Clay Product and Refractory Manufacturing.
3272 Glass and Glass Product Manufacturing.
3273 Cement and Concrete Product Manufacturing.
3279 Other Nonmetallic Mineral Product Manufacturing.
3312 Steel Product Manufacturing from Purchased Steel.
3314 Nonferrous Metal (except Aluminum) Production and Processing.
3315 Foundries.
3321 Forging and Stamping.
3323 Architectural and Structural Metals Manufacturing.
3324 Boiler, Tank, and Shipping Container Manufacturing.
3325 Hardware Manufacturing.
3326 Spring and Wire Product Manufacturing.
3327 Machine Shops; Turned Product; and Screw, Nut, and Bolt Manufacturing.
3328 Coating, Engraving, Heat Treating, and Allied Activities.
3331 Agriculture, Construction, and Mining Machinery Manufacturing.
3335 Metalworking Machinery Manufacturing.
3361 Motor Vehicle Manufacturing.
3362 Motor Vehicle Body and Trailer Manufacturing.
3363 Motor Vehicle Parts Manufacturing.
3366 Ship and Boat Building.
3371 Household and Institutional Furniture and Kitchen Cabinet Manufacturing.
3372 Office Furniture (including Fixtures) Manufacturing.
3379 Other Furniture Related Product Manufacturing.
4231 Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers.
4233 Lumber and Other Construction Materials Merchant Wholesalers.
4235 Metal and Mineral (except Petroleum) Merchant Wholesalers.

4239 Miscellaneous Durable Goods Merchant Wholesalers.
4244 Grocery and Related Product Merchant Wholesalers.
4248 Beer, Wine, and Distilled Alcoholic Beverage Merchant Wholesalers.
4413 Automotive Parts, Accessories, and Tire Stores.
4422 Home Furnishings Stores.
4441 Building Material and Supplies Dealers.
4442 Lawn and Garden Equipment and Supplies Stores.
4451 Grocery Stores.
4522 Department Stores.
4523 General Merchandise Stores, including Warehouse Clubs and Supercenters.
4533 Used Merchandise Stores.
4543 Direct Selling Establishments.
4811 Scheduled Air Transportation.
4841 General Freight Trucking.
4842 Specialized Freight Trucking.
4851 Urban Transit Systems.
4852 Interurban and Rural Bus Transportation.
4853 Taxi and Limousine Service.
4854 School and Employee Bus Transportation.
4859 Other Transit and Ground Passenger Transportation.
4871 Scenic and Sightseeing Transportation, Land.
4881 Support Activities for Air Transportation.
4883 Support Activities for Water Transportation.
4889 Other Support Activities for Transportation.
4911 Postal Service.
4921 Couriers and Express Delivery Services.
4931 Warehousing and Storage.
5322 Consumer Goods Rental.
5621 Waste Collection.
5622 Waste Treatment and Disposal.
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