EMPLOYER 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 covers 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.

EMPLOYER RESPONSIBILITIES

Under the Act, employers include:

- 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.

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.

JUDICIAL ENFORCEMENT

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

APPEALS

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

Address the appeal to:

NYS Industrial Board of Appeals
Harriman State Office Campus
Building 12, Room 136
Albany, New York 12226

If an employer or employee is 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).

CONSULTATION

The PESH 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 site and operations to see if they comply with current safety and health standards. Their report will offer recommendations to the employer. Such findings may become a public document and be released upon request.

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. They 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 take part 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 if the employer complied with the standard.

We can modify or revoke a permanent variance at the request of 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 materials, equipment or technical personnel are not available.

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 Sec. 27a of the Labor Law. See our website for a copy of the rules.

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.

FUNDING ASSISTANCE AVAILABLE

Under the terms of the Act, the Abatement Board can help ease the cost of capital projects to abate occupational safety and health hazards cited by PESH. Public Employers may apply for 75 percent reimbursement under this program.

However, the public employer must correct any cited violation by the abatement date. They may correct the violation by a variance or by other means. State Agencies and public authorities created by the State do not qualify for this funding.

MORE INFORMATION ABOUT FUNDING

Secretary to the Board
NYS Department of Labor
Bldg. 12, Rm. 436
State Office Campus
Albany NY 12249
518-457-7629

FOR MORE INFORMATION, CONTACT A DISTRICT OFFICE

ALBANY DISTRICT

State Office Campus
Bldg. 12, Rm. 158
Albany, NY 12240
518-457-5508

BINGHAMTON DISTRICT

44 Hawley Street, Rm. 901
Binghamton, NY 13901
607-721-8211

BUFFALO DISTRICT

65 Court Street
Buffalo, NY 14202
716-847-7133

GARDEN CITY DISTRICT

400 Oak Street
Garden City, NY 11550
516-228-3970

NEW YORK CITY DISTRICT

75 Varick St., 7th Floor
New York, NY 10013
212-775-3554

ROCHESTER DISTRICT

109 S. Union Street, Rm. 402
Rochester, NY 14607
585-258-8806

SYRACUSE DISTRICT

450 South Salina Street
Syracuse, NY 13202
315-479-3212

UTICA DISTRICT

207 Genesee Street
Utica, NY 13501
315-793-2258

WHITE PLAINS DISTRICT

120 Bloomingdale Road
White Plains, NY 10605
914-997-9514

The New York State Department of Labor is an Equal Opportunity Employer/Program.
Auxiliary aides and services are available upon request and free of charge to individuals with disabilities TTY/TDD 711 or 1-800-662-1220 (English) / 1-877-662-4886.
The PESH 23(g) Program is funded by a federal grant of $4,079,500, which constitutes 42% of its budget. 58%, or 5,680,535 is funded by state or non-governmental sources.