

**CHAPTER 110**  
**OCCUPATIONAL SAFETY AND HEALTH**  
**PROCEDURAL STANDARDS FOR**  
**PUBLIC EMPLOYEES**

**Authority**

N.J.S.A. 34:6A-25 et seq., and P.L. 1995, c.186.

**Source and Effective Date**

R.1998 d.33, effective December 10, 1997.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 110, Occupational Safety and Health Procedural Standards for Public Employees, expires on June 8, 2003. See: 35 N.J.R. 335(a).

**Chapter Historical Note**

Chapter 110, originally Plan Filing for structures to be used as places of employment, was adopted pursuant to N.J.S.A. 34:6A-9 of the Worker Health and Safety Act, and was filed and became effective on July 1, 1969. The chapter was subsequently amended by R.1970 d.36, effective September 1, 1970. See: 1 N.J.R. 14(b), 2 N.J.R. 43(a).

Effective April 1, 1975 the Commissioner, Department of Labor and Industry, withdrew the New Jersey State Plan for Occupational Safety and Health, thereupon jurisdiction for the regulation of occupational safety and health under the Federal Occupational Safety and Health Act of 1970 (OSHA; 29 U.S.C., section 651 et seq.; USPL 91-596) was fully vested with the United States Department of Labor. An order withdrawing the plan was filed on April 16, 1975 as R.1975 d.101. See: 7 N.J.R. 231(a). The text of Chapter 110 was repealed by R.1978 d.288, effective August 16, 1978. See: 10 N.J.R. 258(a), 10 N.J.R. 400(d).

Chapter 110, Procedural Standards for Public Employees, was adopted pursuant to the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., as R.1988 d.42, effective January 19, 1988. See: 19 N.J.R. 1941(a), 20 N.J.R. 195(a).

Pursuant to Executive Order No. 66(1978), Chapter 110 was readopted as R.1993 d.71, effective January 18, 1993, and was redesignated Occupational Safety and Health Procedural Standards for Public Employees, effective February 1, 1993. See: 24 N.J.R. 4234(a), 25 N.J.R. 595(a).

Pursuant to Executive Order No. 66(1978), Chapter 110 was readopted as R.1998 d.33, effective December 10, 1997; and Subchapter 8, On-Site Consultation, was adopted as new rules and former Subchapter 8, Standards and Publications Referred to in this Chapter, was redesignated as Subchapter 9, effective January 5, 1998. See: Source and Effective Date. See, also, section annotations.

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## SUBCHAPTER 1. GENERAL PROVISIONS

### 12:110-1.1 Purpose

The purpose of this chapter is to ensure that all public employees are provided with a safe and healthful work environment free from recognized hazards.

Recodified from N.J.A.C. 12:110-1.3 and amended by R.1998 d.33, effective January 5, 1998.  
 See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
 Former section was "Title and citation".

### 12:110-1.2 Scope

This chapter shall apply to employers, employees, and agencies as described in the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

Recodified from N.J.A.C. 12:110-1.4 by R.1998 d.33, effective January 5, 1998.  
 See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
 Former section was "Authority".

### 12:110-1.3 Documents referred to by reference

The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:110-9.

Recodified from N.J.A.C. 12:110-1.5 and amended by R.1998 d.33, effective January 5, 1998.  
 See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
 Former N.J.A.C. 12:110-1.3 was recodified to N.J.A.C. 12:110-1.1.

### 12:110-1.4 Construction

(a) These rules shall be construed to ensure that recognized workplace hazards are remedied as expeditiously as possible.

(b) Words importing the singular number may extend and be applied to the plural and vice versa.

(c) All references to employees in these rules designate both sexes; whenever the male gender is used it should be construed to include male and female employees.

Recodified from N.J.A.C. 12:110-1.6 and amended by R.1998 d.33, effective January 5, 1998.  
 See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
 Former N.J.A.C. 12:110-1.4 was recodified to N.J.A.C. 12:110-1.2.

### 12:110-1.5 (Reserved)

Recodified to N.J.A.C. 12:110-1.3 by R.1998 d.33, effective January 5, 1998.  
 See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

### 12:110-1.6 (Reserved)

Recodified to N.J.A.C. 12:110-1.4 by R.1998 d.33, effective January 5, 1998.  
 See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

### 12:110-1.7 (Reserved)

Repealed by R.1998 d.33, effective January 5, 1998.  
 See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
 Section was "Validity".

## SUBCHAPTER 2. DEFINITIONS

### 12:110-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

"Commissioner" means the Commissioner of the New Jersey Department of Labor or his or her designee.

"Commissioner of Community Affairs" means the Commissioner of the New Jersey Department of Community Affairs or his or her designee.

"Commissioner of Health and Senior Services" means the Commissioner of the New Jersey Department of Health and Senior Services or his or her designee.

"Compliance Officer" means the person authorized by:

1. The Commissioner of Labor to conduct safety inspections; or
2. The Commissioner of Health and Senior Services to conduct health inspections.

"Days" means calendar days unless otherwise specified.

"Discrimination" means any act of restraint, interference, or coercion against an employee for exercising his or her rights under the Act and this chapter or for participating in the agency's safety and health program.

(b) The Compliance Officer shall inspect and investigate during regular working hours and at other reasonable times any establishment or field site and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein.

(c) Employers shall permit the Compliance Officer to question privately any employee or managerial executive and review all records required by the Act and this subchapter including, but not limited to, records regarding:

1. Any claimed safety or health violation;
2. Work-related deaths, injuries and illnesses other than minor injuries which require only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or of motion, or transfer to another job;
3. Any potential safety or health hazard at any establishment or field site;
4. Any claimed employer act of discrimination related to the Act;
5. Employee exposure to potentially toxic materials or other harmful physical agents which the regulations require to be monitored or measured; or
6. Any other employer activities relating to the Act.

(d) When an employer requires security clearances for entry into a particular area, the employer shall provide appropriate clearances.

Recodified from N.J.A.C. 12:110-4.3 and amended by R.1998 d.33, effective January 5, 1998.

See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

Added (c)1 through (c)6; rewrote (d). Former N.J.A.C. 12:110-4.2, "Posting of notice and availability of Act and rules", was repealed.

#### 12:110-4.3 Advance notice of inspection

(a) Advance notice of inspections shall not be given except in the following situations:

1. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;
2. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection; and
3. In other circumstances where the Commissioner, the Commissioner of Health and Senior Services or their designees determine that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(b) When advance notice is given and where the identity of the employee representative is known, the Compliance Officer shall immediately inform the employee representative of the inspection.

(c) Any person who gives advance notice of any inspection to be conducted under this Act, without authority from the Commissioner, the Commissioner of Health and Senior Services or their designees shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

Recodified from N.J.A.C. 12:110-4.4 and amended by R.1998 d.33, effective January 5, 1998.

See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

Rewrote (c). Former N.J.A.C. 12:110-4.3 was recodified to N.J.A.C. 12:110-4.2.

#### 12:110-4.4 Conduct of inspections

(a) Subject to the provisions of N.J.A.C. 12:110-4.3, inspections shall take place at such times and in such places of employment as the Commissioner, Commissioner of Health and Senior Services or their designees may direct.

(b) At the beginning of an inspection there shall be an opening conference where the Compliance Officer shall present his or her credentials to the employer, supervisor or employee in charge at the establishment or field site; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in N.J.A.C. 12:110-4.2(c) which he or she wishes to review.

(c) The employer shall furnish the Compliance Officer with the identity of the employee representative and with such other information as is necessary to enable the Compliance Officer promptly to inform such representative of the inspection. Where there is no authorized employee representative, the Compliance Officer shall advise a reasonable number of employees of the inspection.

(d) Employers, employees or employee representatives may request that a person(s) with specialized expertise accompany the compliance officer during an inspection. Such request shall not be unreasonably denied.

(e) A Compliance Officer shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection. The Compliance Officer shall employ other reasonable investigative techniques, such as personal dosimetry devices, and question privately any employer, owner, operator, agent or employee of an establishment.

(f) The inspection shall be conducted in such a manner as to preclude unreasonable disruption of the operations of the employer's establishment or field site.

(g) At the conclusion of an inspection, there shall be a closing conference. During the closing conference, the Compliance Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Compliance

Officer any pertinent information regarding conditions in the workplace. The Compliance Officer shall advise the employee and employer of their respective rights related to the inspection.

(h) A complaining party and his or her employee representative shall have the opportunity to be present at and participate in all phases of the inspection from the opening conference through the closing conference. If the employer, the complaining party or the employee representative requests separate opening or closing conferences, or both, written summaries of these conferences shall be provided by the Compliance Officer to all parties affected.

Recodified from N.J.C.A. 12:110-4.5 and amended by R.1998 d.33, effective January 5, 1998.

See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

Added new (c) and (d); and recodified former (c) through (f) as (e) through (h).

#### 12:110-4.5 Representation at inspections

(a) A Compliance Officer shall be in charge of inspections and questioning of persons. A representative of the employer, complaining party, and an employee representative shall be given an opportunity to accompany the Compliance Officer during the physical inspection of any workplace for the purpose of aiding such inspection. Any employee who accompanies a Compliance Officer on an inspection shall receive payment of normal wages for the time spent during the inspection.

1. A Compliance Officer may permit additional employer representatives and additional employee representatives to accompany him or her when he or she determines that additional representatives will further aid in the inspection.

(b) For the purpose of this section, a Compliance Officer shall have authority to resolve all disputes as to which representatives are authorized by the employer and employees to assist in the inspection.

1. If there is no authorized representative of employees, or if the Compliance Officer is unable to determine with reasonable certainty who is such representative, he or she shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(c) A Compliance Officer may deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection.

(d) Only persons authorized to have access into an area for which the employer requires security clearance may accompany a Compliance Officer into such areas.

Recodified from N.J.A.C. 12:110-4.6 and amended by R.1998 d.33, effective January 5, 1998.

See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

Deleted (c); recodified former (d) and (d)1 as (c) and (d).

#### 12:110-4.6 Consultation with employees

(a) Employers shall make appropriate arrangements enabling a Compliance Officer to consult with employees during regular working hours concerning matters of occupational safety or health to the extent necessary for the conduct of an effective and thorough inspection.

(b) During the course of an inspection, any employee or employee representative shall be afforded the opportunity to bring to the attention of the Compliance Officer any apparent violation of the Act or the rules under the Act which he has reason to believe exists in the workplace.

(c) Employee or employee representative interviews shall be conducted in private. Where such inquiry cannot be conveniently conducted at the workplace, the Compliance Officer shall arrange for private interviews at a site other than the workplace.

Recodified from N.J.A.C. 12:110-4.7 and amended by R.1998 d.33, effective January 5, 1998.

See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

#### 12:110-4.7 Complaints by employees

(a) Any employee or employee representative who believes that a violation of the Act exists in the establishment or field site where such employee is employed may request an inspection by giving notice of the alleged violation to the Commissioner, the Commissioner of Health and Senior Services or their designees.

1. Any such notice shall be in writing and set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or an employee representative. However, notice of imminent danger or serious hazard circumstances made by telephone shall be acted upon when warranted.

2. A copy of the notice shall be provided the employer or his agent by the Commissioner, Commissioner of Health and Senior Services or their designees no later than at the time of inspection, except that, upon the request of the person giving such notice, his or her name and the names of individual employees referred to therein, shall not appear in such copy or on any record published, released, or made available by the New Jersey Department of Labor or the Department of Health and Senior Services.

(b) The name of the person giving the notice as described in (a) above shall not appear in the record published, released, or made available by the New Jersey Department of Labor or the Department of Health and Senior Services, unless specifically requested by such person in writing.

(c) If upon receipt of the notice in (a) above the Commissioner, the Commissioner of Health and Senior Services or their designees determines that the complaint meets the requirements set forth in (a) above, and that there are reasonable grounds to believe that the alleged violation exists, an inspection shall be made as soon as practicable, to determine if such alleged violations exist.

3. If written comments in opposition are received, the Commissioner or his or her designee shall review the matter and, within 20 days, give notice to all parties of his or her determination. Any party may appeal this determination within 15 working days of receipt by notifying the Commissioner or his or her designee in writing that he intends to contest this decision before the Review Commission. Such appeals will be processed in accordance with procedures established for Review Commission contests in N.J.A.C. 12:110-4.12

4. If the Commissioner or his or her designee determines that the employer is not making a good faith effort to come into compliance, an Order to Comply establishing penalties shall be issued within 20 days of such determination.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

Former N.J.A.C. 12:110-4.11(a) through (c) were recodified to N.J.A.C. 12:110-4.10; former (d) and (e) were recodified as (a) and (c); added (b) and (d) through (f).

#### 12:110-4.12 Contests before the Review Commission

(a) Any employer to whom an Order to Comply citing a violation or a penalty has been issued or any employee or employee representative may notify the Commissioner or his or her designee in writing that he intends to contest such order before the Review Commission.

(b) Such notice of intent to contest in (a) above shall be postmarked within 15 working days of the issuance of the Order to Comply.

(c) Every notice of intent to contest shall specify the Order to Comply from which the appeal is taken.

(d) The Commissioner or his or her designee shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Review Commission.

(e) The review of a notice to contest a determination to delay issuance of an Order to Comply establishing penalties shall be limited to the issue of good faith efforts. The review of a notice of intent to contest a penalty shall be limited to issues of good faith efforts to comply and assessment levels.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
Added (e).

#### 12:110-4.13 Informal conferences

(a) An affected employer, employee or employee representative may request the initiation of a settlement conference for the purpose of discussing issues raised by an Order to Comply or a notice of intent to contest. If a party requests a settlement conference or the Commissioner or his or her designee determines that an informal settlement

conference would be useful, a settlement conference shall be scheduled and conducted by the Commissioner or his or her designee within 30 days of the receipt of the request or an appeal.

(b) If the conference is requested by the employer, affected employees and/or an employee representative shall be afforded an opportunity to participate.

(c) If the conference is requested by an employee or employee representative, the employer shall be afforded an opportunity to participate.

(d) Any party may be represented by a relevant third party at such conference.

(e) No such conference or request for such conference shall operate as a stay of any 15-working-day period for filing a notice of intent to contest as prescribed in N.J.A.C. 12:110-4.11 or 4.12.

Recodified from N.J.A.C. 12:110-4.14 and amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

#### 12:110-4.14 (Reserved)

Recodified to N.J.A.C. 12:110-4.13 by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

### SUBCHAPTER 5. RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

#### 12:110-5.1 Scope of subchapter

This subchapter establishes procedural rules for recording and reporting occupational injuries and illnesses of public employees involving work-related deaths, injuries and illnesses, other than minor injuries which require only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or of motion, or transfer to another job. Any information which identifies an individual employee shall be confidential.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

#### 12:110-5.2 Log and summary of occupational injuries and illnesses

(a) Each employer shall, except as provided in (b) below, maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment and enter each recordable injury and illness on the log and summary as early as practicable but no later than six working days after receiving information that a recordable

injury or illness has occurred. (See N.J.A.C. 12:110-5.11 for field site operations reporting.)

1. For these purposes form NJOSH No. 200 or an equivalent which is as readable and comprehensible to a person not familiar with it shall be used.

2. The log and summary shall be completed in the detail set forth in the instructions on form NJOSH No. 200.

(b) Any employer may maintain the log of occupational injuries and illnesses, in (a) above, at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

1. There is available at the place where the log is maintained sufficient information to complete the log to a date within six working days after receiving information that a recordable case has occurred, as required by (a) above.

2. At each of the employer's establishments, there is available a copy of the log which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days of the date the log is inspected.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

### 12:110-5.3 Period covered

Records shall be established on a calendar year basis.

### 12:110-5.4 Supplementary record

(a) In addition to the log of occupational injuries and illnesses required under N.J.A.C. 12:110-5.2, each employer shall have available for inspection at each establishment no later than the start of the second work day after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment.

1. The supplementary record shall be completed in the detail prescribed in the instructions required by Employer's First Report of Accidental Injury or Occupational Disease.

(b) The Employer's First Report of Accidental Injury or Occupational Disease shall be acceptable as the supplementary record as required by (a) above.

(c) Workers' compensation, insurance, or other reports are acceptable alternative records to (a) above, if they contain the information required by N.J.A.C. 12:235, Rules of the Division of Workers' Compensation.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

### 12:110-5.5 Annual summary

(a) Each employer shall post an annual summary of occupational injuries and illnesses for each establishment, using form NJOSH No. 200. This summary shall consist of a copy of the year's totals from the form NJOSH No. 200 and the following information from that form:

1. Calendar year covered;
2. Employer name;
3. Establishment name and address;
4. Signature of certifier and his or her title;
5. The date of certification; and
6. If no injuries or illnesses occurred in the year, zeros shall be entered on the totals line.

(b) The summary in (a) above shall be completed by February 1 for the previous calendar year.

(c) Each employer, or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employee who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the log and summary certifying that the summary is true and complete.

(d) Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under N.J.A.C. 12:110-3.5. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1.

1. For employees who do not primarily report for work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who is paid during that month.

2. For multi-establishment employers where operations have closed down in some establishments during the calendar year, the employers need not post summaries for those establishments.

(e) A failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to N.J.S.A. 34:6A-41.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

**12:110-5.6 Retention of records**

Records required by N.J.A.C. 12:110-5.2, 5.4 and 5.5 shall be retained in each establishment for at least five years following the end of the year to which they relate.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

**12:110-5.7 Access to records**

(a) Each employer shall provide, upon request, records required by N.J.A.C. 12:110-5.2, 5.4 and 5.5, for inspection and copying by any representative of the Commissioner or the Commissioner of Health and Senior Services for the purpose of carrying out the provisions of the Act, or by any representative of a State department accorded jurisdiction for occupational safety and health inspections or for statistical compilation under N.J.S.A. 34:6A-40.

(b) The log and summary of all recordable occupational injuries and illnesses (NJOSH No. 200) in N.J.A.C. 12:110-5.2, the supplementary record of N.J.A.C. 12:110-5.4, and the annual summary of N.J.A.C. 12:110-5.5 shall, upon request, be made available by the employer to any employee, former employee, and to their employee representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

(c) Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

(d) Access to the log provided under this section shall pertain to all logs retained under N.J.A.C. 12:110-5.6.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

**12:110-5.8 Reporting of fatality, injury or illness**

(a) As promptly as possible, but no later than the start of the second work day, the employer shall complete the Employer's First Report of Accidental Injury or Occupational Diseases or its equivalent for:

1. Every accidental injury or illness which causes a loss of time from regular duties beyond the working day or shift on which the accident occurred; or
2. Every accidental injury or illness which requires medical treatment beyond ordinary first aid; or
3. An occurrence of an occupational illness whether or not time is lost.

(b) Every fatality or in-patient hospitalization shall be reported, orally and in writing, within eight hours of occur-

rence to the Commissioner of Labor or his or her designee. The reporting may be by telephone or electronic data transmittal.

(c) The written report required by (b) above shall mean the execution of the Employer's First Report of Accidental Injury or Occupational Disease.

(d) The Commissioner of Labor or his or her designee may require such additional reports, in writing or otherwise, as he deems necessary, concerning the fatality, injury or illness.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

**12:110-5.9 Falsification, or failure to keep records or reports**

Failure to maintain records or file reports required by this subchapter, or in the necessary detail required by forms and instructions issued under this subchapter, may result in the issuance of citations and assessment of penalties as provided for in N.J.S.A. 34:6A-41.

**12:110-5.10 Change of employer**

(a) Where an establishment is assigned to another employer, the new employer shall be responsible for maintaining records and filing reports only for that period of the year during which he was assigned such establishment.

(b) In the case of any change in employer, the new employer shall preserve those records, if any, kept by the employer previously overseeing that establishment which are required to be kept under this subchapter. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under N.J.A.C. 12:110-5.6.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

**12:110-5.11 Employees not in fixed establishments**

(a) Employers of employees engaged in physically dispersed or field operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of N.J.A.C. 12:110-5.2, 5.4 and 5.6 with respect to such employees by:

1. Maintaining the required records in an established central place for each operation or group of operations which is subject to common supervision;
2. Having the address and telephone number of the central place available at each worksite; and
3. Having personnel available at the central place during normal business hours to provide by telephone and by mail information from the records maintained.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

### 12:110-5.12 Duties of employers

Upon receipt of an Occupational Injuries and Illnesses Survey Form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return the form in accordance with the aforesaid instruction.

## SUBCHAPTER 6. VARIANCES

### 12:110-6.1 Scope of subchapter

This subchapter establishes rules of practice for administrative proceedings to grant variances under N.J.S.A. 34:6A-39.

### 12:110-6.2 Effect of variances

All variances from a standard which are granted pursuant to N.J.S.A. 34:6A-39 shall have only future effect. In his discretion, the Commissioner may decline to entertain an application for a variance on a subject or issue when an order has been issued to the employer involved and a proceeding on the order or a related issue concerning a proposed penalty is pending before the Review Commission.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

### 12:110-6.3 Notice of a granted variance

Every final action granting a variance shall specify the alternative to the standard involved which the particular variance permits. Every such final action shall be posted for at least 30 days at the place or places where notices to employees are normally posted. The employer shall provide a copy of the final action to employee representatives.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

### 12:110-6.4 Form of documents for variance

(a) No particular form is prescribed for applications and other papers which may be filed in proceedings for a variance. Any applications and other papers shall be clearly legible.

(b) An original and two copies of any application or other papers shall be filed. The original shall be typewritten. Clear carbon copies or photocopies are acceptable copies.

(c) Each application or other paper which is filed in proceedings for a variance shall be signed by the person filing the same or by his attorney or other authorized representative.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

### 12:110-6.5 Temporary variance

(a) Pursuant to N.J.S.A. 34:6A-39, any employer or group of employers, may request a temporary variance from a standard, or provision thereof, by filing a written application containing the information specified in (b) below with the:

Commissioner of Labor  
New Jersey Department of Labor  
PO Box 110  
Trenton, New Jersey 08625-0110

(b) An application filed pursuant to (a) above shall include:

1. The name and address of the applicant;
2. The address of the place or places of employment involved;
3. A specification of the standard or portion thereof from which the applicant seeks a temporary variance;
4. A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the applicant is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;
5. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the standard;
6. A statement of when the applicant expects to comply with the standard and the steps taken and to be taken, with specific dates where appropriate, to come into compliance with the standards;
7. A statement of the facts and supporting documents, to establish that:
  - i. The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;
  - ii. The applicant is taking all available steps to safeguard his employees against the hazards covered by the standard; and
  - iii. The applicant has an effective program for coming into compliance with the standard as quickly as practicable;

8. A certification that the applicant has informed his affected employees of the application by giving a copy thereof to their employee representative, posting the statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and

9. A description of how affected employees have been informed of the application and of their right to appear and be heard at a hearing on the variance application.

(c) The Commissioner may issue one interim order granting relief pending a hearing.

(d) No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter.

(e) A temporary order may be renewed no more than twice provided that an application meeting all of the requirements for the initial application is filed at least 90 days prior to the expiration date of the order. Any renewal shall be for a maximum of 180 days.

(f) In applications relating to health standards the Commissioner shall consult with the Commissioner of Health and Senior Services before rendering a decision.

(g) A copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

#### 12:110-6.6 Permanent variance

(a) Pursuant to N.J.S.A. 34:6A-39, any employer or group of employers, may request a permanent variance and may file a written application containing the information specified in (b) below with the:

Commissioner of Labor  
New Jersey Department of Labor  
PO Box 110  
Trenton, New Jersey 08625-0110

(b) An application filed requesting a permanent variance pursuant to (a) above shall include:

1. The name and address of the applicant;
2. The address of the place or places of employment involved;
3. A specification of the standard or portion thereof from which the employer seeks a variance.

4. A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;

5. A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide workplaces which are as safe and healthful as those which would prevail if the standard, from which the variance is being sought, were to be complied with;

6. A certification that the applicant has informed his employees of the application by:

- i. Giving a copy of the explanation to their employee representative where one exists;
- ii. Posting a statement at the place where notices to employees are normally posted, giving a summary of the application and specifying where a copy may be examined. This notice shall also inform employees of their right to appear and be heard at a hearing on the variance application.

(c) The Commissioner may issue one interim order granting relief pending a hearing.

(d) In applications relating to health standards the Commissioner shall consult with the Commissioner of Health and Senior Services before rendering a decision.

(e) A copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

#### 12:110-6.7 Modification or revocation of orders

(a) An affected employer or an affected employee, group of employees, or employee representative, may apply in writing to the Commissioner for a modification or revocation of an order for a permanent variance any time after six months from its issuance. The application shall contain:

1. The name and address of the applicant;
2. Identification of the order from which relief is sought;
3. A description of the relief which is sought;
4. A statement setting forth with particularity the grounds for relief;
5. If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:

- i. Giving a copy thereof to their employee representative where one exists;

ii. Posting at the place where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself).

6. If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer.

(b) The Commissioner may, on his or her own motion, proceed to modify or revoke an order for a permanent variance at any time after six months from its issuance. In such event, the Commissioner shall cause to be published a notice of his or her intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take such other action as may be appropriate to give actual notice to affected employees. The request for a hearing shall include a short statement of:

1. How the proposed modification or revocation would affect the requesting party; and
2. What the requesting party would seek to show on the subjects or issues involved.

(c) Any final order issued under N.J.S.A. 34:6A-39 may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

#### 12:110-6.8 Action on application

(a) If an application filed pursuant to N.J.A.C. 12:110-6.5, 6.6 or 6.7 does not conform to the provisions required in the applicable section, the Commissioner may deny the application.

(b) Prompt notice of the denial of an application shall be given to the applicant.

1. A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.
2. A denial of an application pursuant to this section shall be without prejudice to the filing of another application.

(c) If an application has not been denied pursuant to (a) above, the Commissioner shall cause to be published a notice of the filing of the application.

(d) A notice of the filing of an application shall include:

1. The terms or an accurate summary of the application;
2. A reference to the Act under which the application has been filed;

3. An invitation to interested persons to submit, within a stated period of time, written data, views, or arguments regarding the application; and

4. Information to affected employers and employees that the matter will be transmitted to the Office of Administrative Law for a hearing.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

#### 12:110-6.9 Hearing processes

(a) Any application for a temporary variance, renewal of a temporary variance, permanent variance or revocation or modification of a permanent variance shall be transmitted by the Commissioner to the Office of Administrative Law for hearing before an administrative law judge upon his or her determination that:

1. An application conforms to the applicable provisions of N.J.A.C. 12:110-6.5, 6.6 or 6.7; and
2. Any period for the submission of written argument or comment has closed.

(b) Hearings on any application shall be pursuant to N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq. and N.J.A.C. 1:1.

(c) The Commissioner, on his or her own motion or that of any party, may consolidate or simultaneously consider two or more proceedings which involve the same or closely related issues.

(d) The Commissioner may adopt, reject or modify the recommended report and decision of the administrative law judge and shall issue his or her final order not more than 45 days after the hearing report is issued.

New Rule, R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

Former section, "Requests for hearing an application," repealed.

#### 12:110-6.10 (Reserved)

Repealed by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

Section was "Consolidation of proceedings".

#### 12:110-6.11 (Reserved)

Repealed by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

Section was "Hearings".

### SUBCHAPTER 7. DISCRIMINATION AGAINST EMPLOYEES

#### 12:110-7.1 Scope of subchapter

This subchapter establishes the procedural rules governing a public employee's allegations of discrimination by a public employer or person.

**12:110-7.2 Employer responsibility and employee rights**

(a) No employer or person shall discharge or in any manner discriminate against any employee because the employee has directly or indirectly:

1. Filed any complaint under or related to the Act with the employer, the Commissioner of Labor or the Commissioner of Health and Senior Services or any other State or local agency. Such complaints shall relate to conditions at the workplace as distinguished from complaints touching upon general public safety and health issues;
2. Requested an inspection;
3. Instituted or caused to be instituted any proceeding under or related to the Act including, but not limited to, petitioning for promulgation of an occupational safety or health standard, applying for modification or revocation of a variance, appealing to the Commissioner of Labor from an element of an Order to Comply or filing a judicial challenge to any standard or Order;
4. Testified or is about to testify in any proceeding under or related to the Act;
5. Made or provided any statement related to safety or health conditions at the workplace in the course of judicial or quasi-judicial, legislative, rulemaking or adjudicative proceedings or during an inspection or investigation of workplace safety or health issues by any public or private body;
6. Participated as a party in enforcement proceeding under the Act;
7. Requested information or advice from the Department of Labor or the Department of Health and Senior Services;
8. Exercised on his or her own behalf or on behalf of others any right afforded by the Act.

(b) Any employee who believes that he or she has been discharged, disciplined or otherwise discriminated against by any person in violation of this section may, within 180 days after the employee first had knowledge or should reasonably have known that such violation did occur, file a complaint with the Commissioner alleging that discrimination.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

**12:110-7.3 Unprotected activities**

(a) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of the Act apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or other adverse action

for legitimate reasons, or from adverse action dictated by non-prohibited considerations.

(b) To establish a violation of the Act, the employee's engagement in protected activity need not be the sole consideration behind the discharge or other adverse action. If protected activity was the substantial reason for the action, or if the discharge or other adverse action would not have taken place but for engagement in protected activity, the Act has been violated. Ultimately, the issue as to whether a discharge or other adverse action was because of protected activity shall be determined on the basis of the facts in the particular case.

Recodified from N.J.A.C. 12:110-7.4 and amended by R.1998 d.33, effective January 5, 1998.

See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

Former section, "Persons prohibited from discriminating", was repealed.

**12:110-7.4 Filing of complaints**

(a) All complaints to the Commissioner shall be in writing, signed by the person complaining (complainant) or his or her representative and shall include the reason for the complaint and the specific relief requested.

(b) The complaint shall be filed with the Commissioner within 180 days after the employee first had knowledge or should reasonably have known of the alleged discriminatory action.

(c) Upon receipt of the complaint, a designee of the Commissioner shall cause an investigation to be made which initially will consist of a review of the written record.

(d) A party in a complaint may be represented by an attorney or an authorized employee representative.

New Rule, R.1998 d.33, effective January 5, 1998.

See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

Former section recodified to N.J.A.C. 12:110-7.3.

**12:110-7.5 Burden of proof**

(a) The burden of proof in any proceeding under this section shall rest with the employee.

(b) In the absence of any direct evidence of retaliation by the employer for the employee's exercise of protected rights under this Act, a prima facie case must be established by the employee showing that he or she engaged in protected activity, that the employer knew of this activity, that the employer was hostile to the protected conduct and that the employer took the alleged action in retaliation for the exercise of the protected rights.

(c) When dual motives, both retaliation for the exercise of a protected activity and legitimate business motives are asserted for the employer's action, the employee shall first establish that the protected activity was a substantial factor in the employer's disputed action. If this is accomplished,

the burden shifts to the employer to establish by a preponderance of evidence that the action occurred for legitimate business reasons and not in retaliation for the protected activity.

Repeal and New Rule, R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
Section was "Complaints under the Act".

#### 12:110-7.6 Remedies

(a) Reinstatement of the employee, back pay, benefits, seniority and reasonable legal costs may be awarded in any successful appeal.

(b) Back pay shall include unpaid salary, including regular wages, increments and across the board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain his or her health insurance coverage during the period of improper suspension or removal.

1. Back pay shall not include items such as overtime pay and holiday premium pay.

2. The award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payments and any other sums normally withheld.

3. The award of back pay shall be reduced by the amount of money actually earned during the separation. If an employee also held other employment at the time of the adverse action, the earnings from such other employment shall not be deducted from the back pay. However, if the employee increased his or her work hours at the other employment during the back pay period, earnings from such additional hours shall be subtracted from the back pay award.

4. Funds that must be repaid by the employee shall not be considered when calculating back pay.

(c) When back pay and benefits are awarded, determination of the actual amounts shall be settled by the parties whenever possible.

(d) If settlement on an amount cannot be reached, either party may request, in writing, Commissioner review.

1. The parties shall submit all information and/or documentation requested by the Commissioner or his or her designee.

2. The Commissioner or his or her designee shall decide the matter in any manner or format which he deems appropriate.

(e) The Commissioner or his or her designee shall order an employer to post an Order to Comply or such other notice deemed appropriate at any or all of the employer's establishments for at least 15 days upon a determination that the employer committed a discriminatory act or some other violation of the Act.

Repeal and New Rule, R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
Section was "Proceedings under the Act".

#### 12:110-7.7 Processing of complaint

(a) Within 10 days of receipt of the complaint, the Commissioner or his or her designee shall provide the complainant and his or her employer with a 20 day period to submit written arguments and documentation in support of their position.

(b) All arguments and documentation submitted by a party must simultaneously be served on all other parties. Evidence of such service must be provided by the party making the submission.

(c) Failure by the complainant to provide additional information requested may result in dismissal of the appeal.

(d) Upon closure of the 20 day period, the Commissioner or his or her designee may provide one additional five working day extension of the comment period upon request, with substantial justification, by any one of the parties.

(e) Upon receipt of the written argument and documentation, the Commissioner or his or her designee may, at his discretion, seek additional information or clarification through:

1. A written list of questions to any or all of the parties. The questions and responses will be made available to all parties; and/or

2. On-site interviews, separately or jointly, with any or all of the parties and/or witnesses. Interviews with employees shall be conducted during their regular work hours and they shall receive payment of normal wages for the time spent during the interviews.

(f) At any time during the processing of the complaint, an affected employer, employee or employee representative may request that the Commissioner or his or her designee hold an informal conference for the purpose of discussing any or all issues raised by the complaint.

1. If a party requests a settlement conference, or the Commissioner or his or her designee determines that an informal settlement conference would be useful, a conference shall be scheduled and conducted by the designee within 30 days of receipt of the request.

2. If the conference is requested by the employer, the employee and/or his or her employee representative shall be afforded an opportunity to participate.

3. If the conference is requested by the employee or his or her employee representative, the employer shall be afforded an opportunity to participate.

4. No conference or request for such conference shall operate as a stay of any time period established for the filing or processing of the complaint.

(g) If the parties reach a settlement through the informal conference process in (f) above, or some other mechanism, the settlement shall be incorporated into the Commissioner's final determination.

(h) Not more than 90 days after the receipt of the complaint, the Commissioner or his or her designee shall notify the employee and the employer of his or her determination. The notice shall become the Commissioner's final determination unless, within 15 days of receipt of the notice, the employer or the employee requests a hearing.

Repeal and New Rule, R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
Section was "Testimony".

### 12:110-7.8 Hearing processes

(a) If the Commissioner determines that the request for a hearing was timely filed, he or she shall transmit the matter to the Office of Administrative Law for hearing before an administrative law judge. See N.J.A.C. 1:1 for Office of Administrative Law hearing procedures.

(b) At the request of the employer, employee or employee representative, or on his own motion, the Commissioner may hold an informal conference for the purpose of attempting to effectuate a settlement of any or all of the issues. All parties shall be afforded an opportunity to participate in any such conference.

(c) The Commissioner may adopt, reject or modify the recommended report and decision of the administrative law judge and shall issue his or her final determination not more than 45 days after the hearing report is issued.

New Rule, R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
Former section was recodified to N.J.A.C. 12:110-7.9.

### 12:110-7.9 Refusal to work

(a) The Act does not afford employees the right to walk off the job because of potential unsafe conditions at the workplace.

(b) If hazardous conditions which may be violative of the Act are not corrected by the employer once brought to his attention or if there is dispute about the existence of a hazard, the employee shall have the opportunity to request inspection of the workplace, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. The employer shall permit the employee to contact the Department of Labor, the Department of Health and Senior Services or other appropriate public agency during regular work hours with no loss in wages to report such conditions.

(c) An employer would not ordinarily be in violation of the Act by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety and health hazards. However, occasions might arise

when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to an imminent danger of serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the imminent danger, and he or she believes that a subsequent discharge, discipline or other employer discrimination activity results from this refusal, he or she may file a discrimination complaint with the Commissioner of Labor in the manner prescribed in this section.

1. The condition causing the employee's apprehension of death or injury shall be of such a nature that a reasonable person under the circumstances then confronting the employee, would conclude that there was an imminent danger of death or serious injury and that there was insufficient time, due to the imminency of the situation, to eliminate the danger through resort to regular statutory enforcement channels.

2. The employee, where possible, shall also have sought from his or her employer, and been unable to obtain a correction of the imminent danger. If the employee requests time and the use of an employer communication system to contact the Department of Labor or the Department of Health and Senior Services to report the perceived imminent danger prior to performing the assignment, the employer shall not deny the request.

Recodified from N.J.A.C. 12:110-7.8 and amended by R.1998 d.33, effective January 8, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
Former section, "Filing of complaint for discrimination", was repealed.

### 12:110-7.10 Employee refusal to comply with rules

(a) Employees who refuse to comply with occupational safety and health standards or valid safety or health rules implemented by the employer in furtherance of the Act are not considered to be exercising any rights afforded by the Act.

(b) Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules, shall not be regarded as discriminatory actions prohibited by the Act. This situation shall be distinguished from refusals to work.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

## SUBCHAPTER 8. ON-SITE CONSULTATION

### 12:110-8.1 Scope subchapter

(a) This subchapter sets forth the requirements for the establishment of a consultation program for public employers.

**12:110-8.2 Goal and purpose**

(a) The Commissioner and the Commissioner of Health and Senior Services may make available to public employers a method to assist employers and employees in reducing and eliminating occupational safety and health hazards through non-enforcement On-Site Consultation initiatives.

(b) The service shall be made available at no cost to public employers to assist them in establishing effective occupational safety and health programs for providing employment and places of employment that are safe and healthful. The overall goal is to prevent the occurrence of injuries and illnesses which may result from exposure to hazardous workplace conditions and from hazardous work practices.

**12:110-8.3 Employer obligations**

(a) During a consultation, the employer shall:

1. Take immediate steps to eliminate employee exposure to imminent danger conditions;
2. Abate all serious hazards identified on or before mutually agreed upon abatement dates;
3. Allow consultants to confer with individual employees and employee representatives during the course of the visit in order to identify and judge the nature and extent of particular hazards within the scope of the request; and
4. Agree to (a)1, 2 and 3 above before the visit proceeds.

(b) Participation in a consultation program shall not relieve the employer from statutory obligations to protect employees and correct hazards outside of the scope of or not detected during the consultation.

(c) The employer shall take immediate action to eliminate employee exposure to a hazard which, in the judgement of the consultant, presents an imminent danger to employees. If the employer fails to take the necessary action, the consultant shall immediately notify the affected employees and the PEOSH enforcement authority and terminate the consultation activity.

(d) If the employer fails to correct a serious hazard by a mutually agreed upon abatement date or any extension thereof, the consultant shall, within five days, notify the PEOSH enforcement authority and terminate the consultation.

(e) Upon receipt of notice from the employer that all serious hazards have been abated, the consultant shall conduct a followup visit to determine if closure of the case is appropriate.

**12:110-8.4 Employee participation**

Employees, employee representatives and members of any workplace safety and health committee shall be encouraged to participate in the on-site consultation, to the extent feasible, as determined by the employer. In the opening conference, the consultant shall encourage the employer to allow employee participation to the fullest extent practicable.

**12:110-8.5 Request and scheduling**

(a) The Commissioner of Labor shall determine appropriate mechanisms to promote the availability of consultation programs.

(b) Consultation activity shall be provided only at the request of the employer.

(c) Employers requesting consultation shall be encouraged to include within the scope of the request all working conditions at the establishment or field site and the employer's entire safety and health program. Employers may specify a limited scope for the visit by indicating working conditions, hazards or situations on which consultation will be focused. When limited scope requests are received, the consultant shall limit review and provide assistance only with respect to those working conditions, hazards or situations specified; except that if the consultant observes, during the course of the visit, hazards which are outside the scope of the request, the consultant shall treat such hazards as though they were within the scope of the request.

(d) Priority shall be assigned to requests from the most hazardous operations.

**12:110-8.6 Conduct of a visit**

(a) Prior to the visit, the consultant may obtain from the employer safety and health related documents which he or she deems necessary regarding employer establishments or operations which are encompassed by the consultation request.

(b) An initial on-site visit shall consist of:

1. An opening conference in which the scope of consultation activities and an agreement to abate hazards by mutually agreed upon dates shall be established;
2. An examination of at least those aspects of the employer's safety and health program which relate to the scope of the visit;
3. An inspection and evaluation of the workplace; and
4. A closing conference during which findings shall be reviewed and specific abatement dates established.

(c) An initial visit may include training and education for employees and employers if a need is revealed by the inspection or the evaluation of the employer's safety and health program.

(d) The visit shall be followed by a written report to the employer confirming the hazards, abatement dates and suggested methods of hazard corrections.

(e) Additional visits may be conducted at the employer's request to provide:

1. Needed education and training;
2. Assistance with the employer's safety and health program; and
3. Technical assistance with the correction of hazards.

(f) If, during the course of the consultation visit, the employer reduces the scope of the visit or curtails the visit, the serious hazards already identified during the visit shall be corrected as established in a closing conference.

(g) Consultants shall identify and provide advice on correction of hazards included in the employer's request and any other safety and health hazards observed in the workplace during the visit.

(h) Consultants shall conduct sampling and testing, with subsequent analysis, as may be necessary to confirm the existence of safety and health hazards.

#### **12:110-8.7 Relationship to enforcement**

(a) Consultations shall be conducted independent of any PEOSH enforcement activity. The discovery of hazards shall not result in citations or penalties. Hazards shall only be reported to the PEOSH enforcement authority if they are not abated by the mutually agreed upon dates or extensions.

(b) An enforcement inspection shall not take place while an on-site consultation activity is in progress at an establishment or field site unless such inspection is required to investigate:

1. A fatality or serious injury;
2. A complaint requiring an enforcement inspection;  
or
3. A matter deemed critical by the Commissioner.

(c) When an enforcement inspection becomes necessary during on-site consultation activities at an establishment or field site, the ongoing consultation activities shall be suspended pending final closure of the enforcement file.

(d) An enforcement inspection of an establishment or field site shall not occur within one year of a full scope safety or health consultation unless such inspection is required to investigate:

1. A fatality or serious injury;
2. A complaint requiring an enforcement inspection;  
or
3. A matter deemed critical by the Commissioner.

(e) An on-site consultation visit may not take place while a PEOSH enforcement inspection is in progress at the establishment or field site. An enforcement inspection shall be deemed in progress from the time the compliance officer initially seeks entry to the workplace through final closure of the enforcement file.

#### **12:110-8.8 Effect upon enforcement**

(a) Unless offered by the employer, a consultant's written report shall not be considered by the enforcement officer in a subsequent enforcement inspection. If offered by the employer, such report shall not be binding on the enforcement officer.

### **SUBCHAPTER 9. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER**

#### **12:110-9.1 Documents referred to by reference**

(a) The full title and edition of each of the standards or publications referred to in this chapter are as follows:

1. N.J.S.A. 34:6A-25 et seq., New Jersey Public Employees Occupational Safety and Health Act.

#### **12:110-9.2 Availability of documents for inspection**

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on regular working days:

New Jersey Department of Labor  
Division of Workplace Standards  
225 East State Street  
Trenton, New Jersey 08625

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

#### **12:110-9.3 Availability of documents from issuing organization**

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning and are the organizations issuing the standards and publications listed in N.J.A.C. 12:110-9.1

N.J.S.A. New Jersey Statutes Annotated  
Copies available from:  
Division of Workplace Standards  
New Jersey Department of Labor  
PO Box 386  
Trenton, New Jersey 08625-0386

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).