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Public Employees Occupational Safety and Health Act

Please note that as of July 1, 2004, the formal name of the Department as denoted below as "The Department of Labor and Industry" or the "Department of Labor" will henceforth be denoted as "The Department of Labor and Workforce Development".

This statute and rule reprint is for ready reference only. For official text consult the New Jersey Statutes Annotated and the New Jersey Administrative Code.

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N.J.S.A. 34:6A-25 et seq. NEW JERSEY PUBLIC EMPLOYEES' OCCUPATIONAL SAFETY AND HEALTH ACT
34:6A-25. Short title

This act shall be known and may be cited as the "New Jersey Public Employees' Occupational Safety and Health Act."

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34:6A-26. Legislative findings

The Legislature finds that the safety and health of public employees in the workplace is of primary public concern. Personal injuries and illnesses arising out of work situations result not only in wage loss and increased medical expenses for employees, but also in decreased productivity and increased workers' compensation expenses for employers. The Legislature therefore declares: a. that it is the policy of this State to ensure that all public employees be provided with safe and healthful work environments free from recognized hazards, b. that it is the responsibility of the State to promulgate standards for the protection of the health and safety of its public workforce, and c. that it is in the public interest for public employers and public employees to join in a cooperative effort to enforce these standards.

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34:6A-27. Definition

As used in this act:

- a. "Advisory board" means the Public Employees Occupational Safety and Health Advisory Board created by section 4 of this act.
- b. "Commissioner" means the Commissioner of Labor or his designee.
- c. "Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of: (1) the State, or any department, division, bureau, board, council, agency or authority of the State, except any bi-state agency; or (2) any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law.
- d. "Employee" means any public employee, any person holding a position by appointment or employment in the service of an "employer" as that term is used in this act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under this act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the "New Jersey Employer-Employee Relations Act," P.L.1941, c. 100, C. 34:13A-1 et seq. shall be excluded from the coverage of this act;
- e. "Employee representative" means a "representative" as that term is defined in the "New Jersey Employer-Employee Relations Act," P.L.1941, c. 100, C. 34:13A-1 et seq.;
- f. "Review commission" means the Occupational Safety and Health Review Commission created by section 18 of this act;

g. "Secretary" means the Secretary of the United States Department of Labor;

h. "Workplace" means a place where public employees are assigned to work.

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34:6A-28. Advisory board

There is created a Public Employees' Occupational Safety and Health Advisory Board to assist the commissioner in establishing standards for the occupational safety and health of public employees. The board shall make itself available to receive information regarding matters of concern to public employees in the areas of occupational safety and health. The advisory board, under the chairmanship of the commissioner, shall consist of the Commissioner of Education, the Commissioner of Health, the Commissioner of Environmental Protection, the Commissioner of Community Affairs, the State Treasurer, or their designees, and 18 members to be appointed by the Governor, as follows: one member representing the fire service, one member representing municipalities, one member representing municipal employees, one member representing county government, one member representing employees of county government, one member representing State employees, one member representing public health care facilities, one member representing employees of public health care facilities, one member representing correctional institutions, one member representing employees of correctional institutions, one member representing law enforcement employees, one member representing local school boards, one member representing local school board employees, one member representing Rutgers, The State University, one member representing employees in institutions of higher education, and three members representing the public. The members selected by the Governor shall be selected on the basis of their experience and competence in the field of occupational safety and health. No more than nine members appointed by the Governor shall be from the same political party. Each member shall serve for a term of three years and until his successor is appointed and qualified. A vacancy shall be filled by appointment by the Governor to the unexpired term. The members of the advisory board shall serve without compensation but shall be entitled to reimbursement for their actual traveling expenses and other expenses incurred in the performance of their duties.

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34:6A-29. Plan for health and safety standards

The commissioner shall, in consultation with the Commissioner of Health, the Commissioner of Community Affairs and the advisory board, promulgate a plan for the development and enforcement of occupational safety and health standards with respect to public employers and public employees, in accordance with section 18(c) of the "Occupational Safety and Health Act of 1970," Pub.L.91-596 (29 U.S.C. s.651 et seq.). The Department of Labor shall be the sole agency responsible for administering and enforcing this plan throughout the State. The plan shall:

- a. Provide for the development and enforcement of safety and health standards;
- b. Provide for the right of entry and inspection in all workplaces by the commissioner;
- c. Provide for the right of entry and inspection in all workplaces by the Commissioner of Health;
- d. Prohibit advance notice of inspections;
- e. Contain satisfactory assurances that the Department of Labor and the Department of Health have the legal authority and qualified personnel necessary to carry out their responsibilities under this act;
- f. Give satisfactory assurances that the State will devote adequate funds to the administration and enforcement of the standards;
- g. Contain satisfactory assurances that the State will, to the extent permitted by law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the corresponding provisions of the "Occupational Safety and Health Act of 1970," Pub.L.91-596 (29 U.S.C. s.651 et seq.);
- h. Provide that the Department of Labor shall make such reports to the secretary in the form and containing the information that the secretary from time to time requires; and
- i. Provide for such cooperation with the Department of Community Affairs in implementing the plan as is consistent with the provisions of P.L.1983, c.516 (C.34:6A-25 et seq.) and the "Occupational Safety and Health Act of 1970," Pub.L.91-596 (29 U.S.C. s.651 et seq.).

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34:6A-30. Adoption of standards

a. The commissioner shall provide for the adoption of all applicable occupational health and safety standards, amendments or changes adopted or recognized by the secretary under the authority of the "Occupational Safety and Health Act of 1970." Whenever the United States Secretary of Labor adopts a standard pursuant to the provisions of the "Occupational Safety and Health Act of 1970" (29 U.S.C. s.651 et seq.), the commissioner shall publish that federal standard in the New Jersey Register in accordance with the provisions of section 5 of P.L.1968, c.410 (C.52:14B-5) and, notwithstanding the provisions of section 4 of P.L.1968, c.410 (C.52:14B-4), that federal standard shall be deemed to be duly adopted as a State regulation upon its publication by the commissioner.

b. The commissioner shall not adopt any standard within the scope of the State uniform construction code adopted pursuant to P.L.1975, c.217 (C.52:27D-119 et seq.) or the uniform fire safety code adopted pursuant to P.L.1983, c.383 (C.52:27D-192 et al.), unless the standard is a standard adopted pursuant to subsection a. of this section. If the Commissioner of Community Affairs determines that a standard for building or structural safety adopted by the commissioner pursuant to subsection a. of this section is more stringent than the applicable standards adopted into code pursuant to the State uniform construction code or the uniform fire safety code, he shall adopt a rule incorporating the more stringent standard into the relevant code. If the Commissioner of Community Affairs determines that there is a difference between a provision of any new or existing standard adopted pursuant to subsection a. of this section and a provision of the uniform construction code or the uniform fire safety code, and he determines that the provision of the code is as effective as the provision of the standard, he shall prepare and submit to the commissioner an application for submission to the Secretary of Labor seeking (1) the approval of that provision of the uniform construction code or the uniform fire safety code as being as effective as the provision of the standard and (2) the approval of the incorporation of the code provision into the State plan.

c. Where no federal standards are applicable or where standards more stringent than the federal standards are deemed advisable, the commissioner shall, in consultation with the Commissioner of Health and the Commissioner of Community Affairs and, with the advice of the advisory board, provide for the development of State standards as may be necessary in special circumstances.

d. The commissioner and the Commissioner of Health, or their designees, shall meet with the advisory board at each scheduled meeting for these purposes. The advisory board shall meet not less than four times each year.

e. The Commissioner of Health shall not adopt standards or issue orders to comply in any area but shall be charged with inspection, investigation and related activities in the following areas:

1. Occupational health and environmental control;
2. Medical and first aid;
3. Toxic and hazardous substances;
4. Respiratory protective equipment; and
5. Sanitation

The Commissioner of Labor shall be charged with inspection, investigation and related activities for all other regulated areas and with adopting of standards and issuing orders to comply in all regulated areas.

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34:6A-31. Promotion of goals of the act

The commissioner, in consultation with the Commissioner of Health and the Commissioner of Community Affairs and with the advice of the advisory board, shall:

a. Provide for a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards arising from undesirable, inappropriate, or unnecessarily hazardous or unhealthful working conditions at the workplace and of stimulating employers and employees to institute new, and to perfect existing, programs for providing safe and healthful working conditions;

b. Provide for the publication and dissemination to employers, employees, and labor organizations, and the posting, where appropriate, by employers of informational, educational and training materials calculated to aid and assist in achieving the objectives of this act;

c. Provide for the establishment of new, and for the perfection and expansion of existing, programs for occupational safety and health education for employers and employees and institute methods and procedures for the establishment of a program for voluntary compliance by employers and employees with the standards established pursuant to this act.

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34:6A-32. Promulgation of regulations.

The commissioner shall, in consultation with the Commissioner of Health and Senior Services and the Commissioner of Community Affairs and with the advice of the advisory board, promulgate all regulations which he deems necessary for the proper administration and enforcement of this act. A variance may be granted if the commissioner determines that the applicant is in compliance with the requirements for a permanent variance as set forth in subsection c. of section 15 of this act. The variance shall not be deemed to be a variation approved pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) or the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et al.) or any other building or fire safety standard or code.

Space leased by a public employer shall be subject to current health or safety rules and regulations. Any deficiency, including a deficiency resulting either from occupant use or deferred maintenance by the lessor, shall be subject to correction in accordance with the governing rules and regulations at the time that the deficiency is cited by the commissioner or the Commissioner of Health and Senior Services . However, a lease of any duration may not be entered into unless the leased property is in conformance with such rules and regulations as are in effect at the time the lease is executed.

No fire company, first aid or rescue squad, whether paid, part-paid, or volunteer, shall be required to pay to the Department of Labor or the Department of Health and Senior Services any registration or inspection fee imposed by rule or regulation with regard to the filling of air cylinders for respiratory equipment used by the fire company, first aid or rescue squad.

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34:6A-33. Responsibilities of employers

Every employer shall:

- a. Provide each of his employees with employment and a place of employment which are free from recognized hazards which may cause serious injury, physical harm or death to his employees; and
- b. Comply with occupational safety and health standards promulgated under this act.

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34:6A-34. Duty of compliance by public employees

Every public employee shall comply with occupational safety and health standards and all regulations promulgated under this act which are applicable to his own actions and conduct.

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34:6A-35. Inspections; compliance

- a. The commissioner and the Commissioner of Health shall be charged with making inspections in their jurisdictional areas as specified in section 6 of P.L.1983, c.516 (C.34:6A-30). The commissioner may call on the professional staff of other departments whenever he deems their assistance necessary.
- b. Each commissioner shall have the right of immediate entry at reasonable hours and without advance notice into any workplace to conduct such investigations as he may deem necessary. Each commissioner shall maintain records of the results of any investigation under his jurisdiction, which, after a final agency or judicial action is taken regarding any order to comply which results from the inspection, shall be made available to the public upon request, except that any information which identifies an individual employee shall be confidential. The authority of each commissioner to inspect any premises for purposes of investigating an alleged violation under his jurisdiction shall not be limited to the alleged violation but shall extend to any other area of the premises in which he has reason to believe that a violation of any provision of this act under his jurisdiction exists. The Commissioner of Health shall make his inspection records available to the commissioner for purposes of enforcement.
- c. If either commissioner concludes that conditions or practices in violation of any provision of this act under his jurisdiction exist in any workplace, he shall inform the affected employees and employers of the danger.
- d. Each order to comply issued under this section, or a copy or copies thereof, shall be prominently posted at or near each place where a violation referred to in the order to comply occurred and the commissioner shall make the order available to employee representatives, affected employees and, upon request, to the public.
- e. Any employee who accompanies either commissioner on an inspection shall receive payment of normal wages for the time spent during the inspection.

f. Where there is no authorized employee representative, each commissioner or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

g. Any person who gives advance notice of any inspection to be conducted under this act, without authority from the commissioner, the Commissioner of Health 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.

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34:6A-36. Notice of safety violation

a. Any employee, group of employees or employee representative who believes that a violation of a safety standard exists, or that an imminent danger exists, may request an inspection by giving notice to the commissioner of the violation or danger. The notice and request shall be in writing, shall set forth the grounds for the notice and shall be signed by the employee, a group of employees or an employee representative. Upon the request of the person giving the notice, his name or the name of any employee representative giving the notice shall be withheld. The commissioner shall conduct an appropriate inspection at the earliest time possible.

The commissioner shall so interpret and administer this section so as to encourage any employee, group of employees or employee representative who believes that a violation of a safety standard exists, or that an imminent danger exists, to report that violation or danger in the first instance to the employer's safety officer.

b. A representative of the employer, the employee or employees giving the notice and an employee representative shall be given the opportunity to accompany the commissioner during an inspection for the purpose of aiding in such inspection. Where there is no authorized employee representative, the commissioner shall consult with a reasonable number of employees concerning matters of safety in the workplace.

c. Any employee who accompanies the commissioner on an inspection shall receive payment of normal wages for the time spent during the inspection.

d. The information obtained by the commissioner under this section shall be obtained with a minimum burden upon the employer.

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34:6A-37. Repealed

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34:6A-38. Notice of health standard violation

a. Any employee, group of employees or employee representative who believes that a violation of a health standard exists, or that an imminent danger exists, may request an inspection by giving notice to the Commissioner of Health of the violation or danger. The notice and request shall be in writing, shall set forth the grounds for the notice and shall be signed by the employee, a group of employees or employee representative. Upon the request of the person giving the notice, his name or the name of any employee representative giving the notice shall be withheld. The Commissioner of Health shall conduct an appropriate inspection at the earliest time possible. In any case of a possible imminent hazard, the commissioner may request the assistance of other State agencies having appropriate expertise.

The Commissioner of Health shall so interpret and administer this section so as to encourage any employee, group of employees or employee representative who believes that a violation of a health standard exists, or that an imminent danger exists, to report that violation or danger in the first instance to the employer's safety officer.

b. A representative of the employer, an employee giving the notice and an employee representative shall be given the opportunity to accompany the Commissioner of Health during an inspection for the purpose of aiding in such inspection. Where there is no authorized employee representative, the Commissioner of Health shall consult with a reasonable number of employees concerning matters of health in the workplace.

c. Any employee who accompanies the Commissioner of Health or the Commissioner of Community Affairs on an inspection shall receive payment of normal wages for the time spent during the inspection.

d. The information obtained by the Commissioner of Health under this section shall be obtained with a minimum burden upon the employer.

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34:6A-39. Variances

a. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this act. A temporary order shall be granted only if the employer files an application with the commissioner which meets the requirements of this section and establishes in a hearing conducted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and P.L.1978, c.67 (C.52:14F-1 et seq.) that:

- he is unable to comply with the standard by its effective date because of the unavailability of professional or technical personnel or of materials and equipment needed to comply with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;
- he is taking all available steps to safeguard employees against the hazards covered by the standard; and
- he has an effective program for complying with the standard as quickly as practicable.

Any temporary order issued under this section shall prescribe the practices, means, methods, operations and processes which the employer shall adopt and use while the order is in effect and the order shall state in detail what the employer's program shall be for complying with the standard.

A temporary order may be granted only if notice to the employees is given; provided, however, that the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. An employee representative or, where one does not exist, the affected employees, may appear at the hearing, with or without counsel, and submit testimony concerning the employer's application for the variance. 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, except that such an order may be renewed no more than twice so long as the requirements of this section are met and if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect longer than 180 days.

b. An application for temporary variance shall contain:

- a specification of the standard or portion thereof from which the employer seeks a variance;
- a representation by the employer, supported by representations from qualified persons who have firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor;
- a statement of the steps he has taken and will take, with specific dates, to protect employees against the hazard covered by the standard;
- a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take, with dates specified, to comply with the standard;
- a certification that he has informed his employees of the application by giving a copy thereof to their employee representative where one exists, and 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. A description of the notification procedure used by the employer shall be contained in the certification. The information to the employees shall also inform them of their right to appear and be heard, as set forth in subsection a. of this section, at the hearing on the variance application; and
- a statement, if appropriate, that such a variance is necessary to permit an employer to participate in an experiment approved by him designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

c. Any affected employer may apply to the commissioner for a rule or order for a permanent variance from a standard promulgated under this act. An employee representative or, where one does not exist, the affected employees, shall be given notice of each such application and shall be afforded an opportunity to participate in a hearing pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-1 et seq.) and P.L.1978, c.67 (C.52:14F-1 et seq.) on the merits of the application, with or without counsel, and to submit testimony. The commissioner shall issue such rule or order if he determines on the record, after an opportunity for an inspection, where appropriate, that the proponent of the variance has demonstrated, by a preponderance of the evidence, that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide workplaces which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer shall maintain and the practices, means, methods, operations and processes which he shall adopt and utilize to the extent they differ from any standard adopted pursuant to this act. Such a rule or order may be modified or revoked upon application by an employer, any employee, group of employees or employee representative, or by the commissioner on his own motion, in the manner prescribed for its issuance under this section at any time after six months from its issuance.

d. In determining whether to grant a variance from a health standard, the commissioner shall consult with the Commissioner of Health.

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34:6A-40. Employer records; reports

In accordance with the regulations which shall be adopted by the commissioner, each employer shall make, keep, preserve and make available the following records to the commissioner and the Commissioner of Health:

- a. Records regarding the employer's activities relating to this act as the commissioner deems necessary or appropriate for the enforcement of this act or for developing information regarding the causes and prevention of occupational accidents and illness.
- b. Records regarding 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.
- c. Records regarding employee exposure to potentially toxic materials or other harmful physical agents which the regulations require to be monitored or measured. The regulations shall provide employees or their representatives with an opportunity to observe the monitoring or measurement and access to the records of the monitoring or measurement. Each employee or former employee shall be informed of and have access to all records which will indicate his own exposure to toxic materials or harmful physical agents and the properties, characteristics and effects thereof. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials of harmful physical agents in concentrations or at levels which exceed those prescribed by any safety and health standard promulgated under this act, and shall inform any employee who is being exposed of the corrective action being taken and the time limit for compliance pursuant to subsection a. of section 17 of this act.

Each employer shall, in accordance with regulations which shall be adopted by the commissioner, file with the commissioner periodic reports based on the records kept pursuant to this section. The commissioner shall develop and maintain an effective program of collection, compilation, analysis and reporting to the public of statistics on 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, except that any information which identifies an individual employee shall be confidential. The commissioner shall promote, encourage or directly engage in programs of studies, information and communication concerning occupational safety and health statistics.

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34:6A-41. Compliance orders; violations; penalties

- a. If the commissioner determines that an employer has violated a provision of this act, or a safety standard or regulation promulgated under this act, if the commissioner receives a certification from the Commissioner of Health that an employer violation has been determined to exist within the Commissioner of Health's jurisdiction, or if the commissioner receives a report from the Department of Labor or the Department of Health, prepared as a result of the investigation of the death or serious injury of one or more firefighters, which indicates the existence of a violation of this act or of a safety standard promulgated under this act, he shall with reasonable promptness, and in no case more than six months after his determination or the receipt of the certificate or report, issue to the employer a written order to comply which shall describe the nature of the violation, including a reference to the provision of the section, standard, regulation or order alleged to have been violated, the sanction therefor, where appropriate, and shall fix a reasonable time for compliance.
- b. If the commissioner issues to an employer an order to comply, the employer shall post such order or a copy thereof at or near each location of the violation cited in the order so that it is clearly visible to affected employees. The commissioner shall make such order available to employee representatives and affected employees, and shall make the order available to the public upon request.
- c. If no notice of intent to contest any provision of the order is filed with the commissioner by an employer, employee or employee representative within fifteen working days of the issuance of an order to comply, the order shall be deemed final and not subject to review by any court or agency. If, within fifteen working days of the issuance of an order to comply, any employer, employee or employee representative files a notice with the commissioner of intent to contest any provision of the order, the commissioner shall immediately advise the Occupational Safety and Health Review Commission of the notification, and the commission shall afford an opportunity for a hearing. The review commission shall thereafter issue an order, based on a finding of fact, affirming, modifying, or vacating the commissioner's order to comply or the proposed penalty, or directing other appropriate relief, and the order shall become final 45 days after its issuance. The rules of procedure prescribed by the review commission shall provide affected employers, employees, or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.
- d. If the time for compliance with an order of the commissioner issued pursuant to this section elapses, and the employer has not made a good faith effort to comply, the commissioner shall impose a civil administrative penalty of up to \$7,000 per day for each violation of a provision of P.L.1983, c.516 (C.34:6A-25 et seq.), or of a standard or regulation promulgated under that act, or of an order to comply. Any employer who willfully or repeatedly violates the requirements of this section or any standard, rule, order or regulation promulgated under that act shall be assessed a civil administrative penalty of up to \$70,000 for each violation. Penalties imposed under this section may be recovered with costs in a civil action commenced by the commissioner by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.) in the Superior Court or a municipal court, either of which shall have jurisdiction to enforce "the penalty enforcement law" in connection with this act. If the violation is of a continuing nature, each day during which it continues after the date given for compliance in accordance with the order of the commissioner shall constitute an additional separate and distinct offense.
- e. The commissioner is authorized to compromise and settle any claim for a penalty under this section in such amount as, in the discretion of the commissioner, may appear appropriate and equitable under all of the circumstances. In any claim involving investigations conducted by the Department of Health, the commissioner shall make the determination as to the compromise or settlement of the claim in consultation with the Commissioner of Health.

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34:6A-42. Occupational Safety and Health Review Commission

a. There is established an Occupational Safety and Health Review Commission within the Department of Labor to hear appeals regarding orders to comply and penalties issued under this act. The commission shall consist of three members appointed by the Governor from among persons who by reason of training, education or experience are qualified to carry out the functions of the commission. The Governor shall designate one of the members of the commission to serve as chairman.

b. Members of the review commission shall serve terms of four years and until their successors are appointed. The salaries, compensation and wages of the members of the commission shall be established by the commissioner. The Department of Labor shall provide the review commission with the support staff necessary for the review commission to perform its duties. The members and the support staff shall be reimbursed for necessary expenses incurred in the performance of their duties.

c. The review commission shall meet as often as is necessary to hear and rule on appeals regarding orders to comply and penalties issued under this act. The review commission shall adopt rules with respect to the procedural aspects of its hearings.

d. An employee or employee representative may participate as a party to any proceeding regarding the employees' employer before the review commission.

e. The review commission shall hear and make a determination upon any proceeding instituted before it, and shall make a report of the determination which shall constitute its final disposition of the proceedings. The report shall become the final order of the commission 45 days after the issuance of the report.

f. In the conduct of hearings the review commission may subpoena and examine witnesses, require the production of evidence, administer oaths and take testimony and depositions.

g. After hearing an appeal the review commission may sustain, modify or dismiss a citation or penalty.

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34:6A-43. Appeals from decision of review commission

Any appeal from a decision of the review commission shall be to the Appellate Division of the Superior Court.

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34:6A-44. Restraining orders

The Attorney General, at the request of and on behalf of the commissioner, may bring an action in the Superior Court to restrain any conditions or practices in any workplace which the commissioner determines, in accordance with section 17 of this act, are such that a danger exists which could reasonably be expected to cause death or serious physical harm. Any order issued under this act may require such steps to be taken as may be necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists.

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34:6A-45. Retaliatory discrimination prohibited

a. No person shall discharge, or otherwise discipline, or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this section or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or others of any right afforded by this section.

b. Any employee who believes that he has been discharged, disciplined or otherwise discriminated against by any person in violation of this section may, within 180 days after the employee first has knowledge such violation did occur, file a complaint with the commissioner alleging that discrimination. Upon receipt of the complaint, the commissioner shall cause an investigation to be made as he deems appropriate. If, upon that investigation, the commissioner or his designee determines that the provisions of this section have been violated, he shall, not more than 90 days after the receipt of the complaint, notify the employer and the employee of his determination, which shall include an order for all appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay and reasonable legal costs. The notice shall become the commissioner's final determination, unless, within 15 days of receipt of the notice, the employer or employee requests a hearing before the commissioner or his designee, in which case the commissioner shall issue his final determination not more than 45 days

after the hearing report is issued.

c. Nothing in this section shall be deemed to diminish the rights of any employee under any law, rule or regulation or under any collective negotiation agreement.

d. Any waiver by an employee or applicant for employment of the benefits or requirements of this act shall be against public policy and be void and any employer's request or requirement that an employee waive any rights under this act as a condition of employment or continued employment shall constitute an act of discrimination.

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34:6A-46. Repealed

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34:6A-47. Advisors to commission of capital budgeting and planning on workplace safety and health

The Commissioner of Labor, the Commissioner of Community Affairs and the Commissioner of Health shall serve in an advisory capacity to the New Jersey Commission of Capital Budgeting and Planning on matters of workplace safety and health, to ensure that new construction meets the standards established by this act.

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34:6A-48. Act inapplicable to right to strike

Nothing in this act shall be deemed to give public employees the right to strike over occupational safety and health issues.

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34:6A-49. Uniform codes not superseded, permits required

Except as provided in section 6 of P.L.1983, c.516 (C.34:6A-30), nothing in this act shall be deemed to conflict with or supersede any provision of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) or the code promulgated thereunder or to affect or limit the powers, duties, authorities and responsibilities of the Commissioner of Community Affairs or any enforcing agency thereunder. Except as provided in section 6 of P.L.1983, c.516 (C.34:6A-30), nothing in this act shall be deemed to conflict with or supersede any provision of the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et al.), or the code promulgated thereunder, nor affect or limit the powers, duties, authorities and responsibilities of the Commissioner of Community Affairs or any enforcing agency thereunder.

Whenever an action taken to comply with the provisions of this act makes it necessary for a property owner or employer to obtain a permit pursuant to the State uniform construction code, the owner or employer shall obtain the permit from the enforcing agency having jurisdiction. The commissioner shall inform any owner or employer who is required to take an action to be in compliance that it is the responsibility of the owner or employer to contact the agency having jurisdiction to determine whether a permit is required and to obtain any required permit.

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34:6A-50. Annual report

a. Not later than December 31 of the first full calendar year following the effective date of this 1995 amendatory and supplementary act and not later than December 31 of each subsequent year, the commissioner shall, in consultation with the Commissioners of Health and Community Affairs, issue to the Governor and the Legislature an annual report on the effects of this 1995 amendatory and supplementary act on the protections provided, State plan approval, and costs and benefits to public employees and employers.

b. The report issued pursuant to subsection a. of this section on the fifth full calendar year following the effective date of this 1995 amendatory and supplementary act shall include any recommendations the commissioner deems appropriate for amendments to, or the repeal of, this 1995 amendatory and supplementary act, provided that the recommendations shall include an implementation plan which includes measures to offset any loss of federal funding caused by any recommended amendments or repeal.

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CHAPTER 100. SAFETY AND HEALTH STANDARDS FOR PUBLIC EMPLOYEES

Chapter Expiration Date: Chapter 100, Safety and Health Standards for Public Employees, expires on March 24, 2032.

SUBCHAPTER 7. STANDARD FOR HAZARD COMMUNICATION

Effective June 5, 2017, PEOSHA is modifying its existing Hazard Communication Standard to conform to the OSHA Hazard Communication Standard, which incorporates the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS).

The PSOSH adopted final rule, repeals, amendments and new rules do not contain any standards or requirements that exceed standards or requirements imposed by Federal law, with the exception of additional refresher training requirements. The State is authorized by N.J.S.A. 34:6A-30.c and N.J.A.C. 12:100-3A.2(b) to establish standards that provide protections to public employees that are greater or more stringent than those the OSHA establishes under the OSH Act.

Additionally, the final rule fulfills the State Legislature's mandate that the Department of Labor and Workforce Development adopt OSHA standards for its PEOSH program."

Current e-CFR data is available here <https://www.ecfr.gov/cgi-bin/text-idx?SID=192d4abcec8d58b389944c80c5552d16&mc=true&node=pt29.5.1910&rgn=div5>

12:100-7.1 Purpose

The purpose of this subchapter is to implement Federal standards for workplace hazard communication pursuant to, and as supplemented by, the New Jersey Public Employees' Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., and the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., applicable to entities subject to N.J.S.A. 34:6A-25 et seq.

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12:100-7.2 Definitions

(a) The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"American Board of Industrial Hygiene" means the entity for which the contact information is American Board of Industrial Hygiene, 6015 W St Joe Hwy, Suite 102, Lansing, MI 48917-4875, telephone: (517) 321-2638, telefacsimile: (517) 321-4624, website: www.abih.org, electronic mail address: abih@abih.org.

"Board of Certified Safety Professionals" means the entity for which the contact information is Board of Safety Professionals, 2301 W Bradley Avenue, Champaign, IL 61821, telephone: (217) 359-9363, telefacsimile: (217) 359-0055, website: www.bcsp.org.

"Certified industrial hygienist" means a person holding certification as a certified industrial hygienist issued by the American Board of Industrial Hygiene.

"Certified safety professional" means a person holding certification as a Certified Safety Professional issued by the Board of Certified Safety Professionals.

"Employee representative" means the broader, more inclusive of the following terms:

1. "Employee representative" as N.J.S.A. 34:5A-3 and 34:6A-27 define that term; and
2. "Designated representative" as 29 CFR 1910.1200 defines that term.

"Environmental and Occupational Health Assessment Program" or "EOHAP" mean the Environmental and Occupational Health Assessment Program of the New Jersey Department of Health, for which the contact information is PO Box 369, Trenton, NJ 08625-0369.

"Environmental hazardous substance list" means environmental hazardous substance list, as N.J.S.A. 34:5A-3 defines that term.

"Environmental survey" means an environmental survey, as N.J.S.A. 34:5A-3 defines that term.

"Hazardous Substance Fact Sheet" means a hazardous substance fact sheet, as N.J.S.A. 34:5A-3 defines that term.

"New Jersey State Safety Council" means the entity by that name for which the contact information is:

1. For the training center: New Jersey State Safety Council Training Center, 6 Commerce Drive, Cranford, NJ 07016; and
2. For the administration office: New Jersey State Safety Council, 25 Commerce Drive, Cranford, NJ 07016; telephone: (908) 272-7712 or (800) 228-3834; telefacsimile: (908) 276-6622; website: <http://www.njsafety.org>.

"Registered professional nurse" means a person holding licensure as a registered professional nurse by the State Board of Nursing pursuant to N.J.S.A. 45:11-23 et seq., and N.J.A.C. 13:37.

"Right to Know brochure" means the document at N.J.A.C. 12:100-7 Appendix A, incorporated herein by reference, also available at <http://www.nj.gov/health/forms>, and paper copies of which are available upon request from the EOHAP.

"Right to Know hazardous substance list" means the workplace hazardous substance list and the environmental hazardous substance list.

"Right to Know poster" means the document at N.J.A.C. 12:100-7 Appendix B, incorporated herein by reference, also available at <http://www.nj.gov/health/forms>, and paper copies of which are available upon request from the EOHAP program.

"Right to Know survey" means a workplace survey and an environmental survey.

"Technically qualified person" means:

1. Is a registered professional nurse, a certified safety professional, or a certified industrial hygienist;
2. Has a bachelor's degree or higher in industrial hygiene, environmental science, health education, chemistry, or a related field;
3. Has at least one year of experience handling or working with hazardous substances and has completed at least 30 hours of training in one or more hazardous materials training courses offered by:
 - i. The New Jersey State Safety Council;
 - ii. The New Jersey Department of Health;
 - iii. An accredited public or private educational institution;
 - iv. A labor union;
 - v. A trade association;
 - vi. A private organization; or
 - vii. A government agency; or
4. For the purpose of teaching the recruit firefighting and hazardous materials training courses established by the New Jersey Department of Community Affairs (DCA), a person whom the DCA certifies as a Fire Instructor Level I or Level 2 pursuant to N.J.A.C. 5:73-5.

"Workplace hazardous substance list" means workplace hazardous substance list, as N.J.S.A. 34:5A-3 defines that term.

"Workplace survey" means a workplace survey, as N.J.S.A. 34:5A-3 defines that term.

(b) As used in this subchapter, the following words and terms used at 29 CFR 1910.1200 shall have the following meanings, unless the context clearly indicates otherwise:

"Assistant Secretary" means the New Jersey Department of Labor and Workforce Development and/or the EOHAP, as applicable under the circumstances.

"Designated representative" means the broader and more inclusive of the following terms:

1. "Employee representative" as N.J.S.A. 34:5A-3 and 34:6A-27 define that term; and
2. "Designated representative" as 29 CFR 1910.1200 defines that term.

"Director" means the New Jersey Department of Labor and Workforce Development and/or the EOHAP, as applicable under the circumstances.

"Occupational Safety and Health Administration" or "OSHA" means the Department of Labor and Workforce Development and/or the EOHAP, as applicable under the circumstances.

"Occupational Safety and Health Review Commission" means the New Jersey Public Employees Occupational Safety and Health Review Commission established pursuant to N.J.S.A. 34:6A-42.

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12:100-7.3 Employee information and training

(a) In addition to the training that 29 CFR 1910.1200 requires employers to provide (hereinafter referred to as "initial training"), employers shall provide refresher training to all employees every two years at no cost to employees and during working hours.

1. Refresher training is to be an abbreviated version of initial training.

(b) In addition to the information that 29 CFR 1910.1200 requires employees to receive, initial and refresher training shall address:

1. The location and availability of the written hazard communication program, the list(s) of hazardous chemicals, hazardous substance fact sheets, the Right to Know survey, and the Right to Know hazardous substance list;
2. The applicable provisions of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq.;
3. An explanation of the Right to Know survey, labeling, hazardous substance fact sheets, the Right to Know hazardous substance list, and the Right to Know poster, and how employees can obtain these documents and use appropriate hazard information from these sources; and
4. Distribution of a copy of the Right to Know brochure.

(c) An employer shall have a technically qualified person conduct initial and refresher training.

(d) Employers shall establish and maintain records of initial and refresher training that include the following information:

1. The dates of the training sessions;
2. The contents or a summary of the training sessions;
3. The names and qualifications of persons conducting the training; and
4. The names and job titles of all persons attending the training sessions.

(e) Employers shall maintain training records for the duration of each employee's employment.

(f) Employers shall ensure that all training records required to be maintained by this subchapter are available, upon request, for examination and copying, to employees, employee representatives, and representatives of the Departments of Labor and Workforce Development and Health.

(g) Employers shall ensure the provision of initial and refresher training using material that is appropriate in content and vocabulary to the educational level, literacy, and language of the employees receiving training.

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12:100-7.9 (Reserved)

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APPENDIX A Right to Know brochure

APPENDIX A

The following three agencies work together to implement the *Worker and Community Right to Know (RTK) Act*:

New Jersey Department of Health
EOHAP
PO Box 368
Trenton, NJ 08625-0368
(609) 984-2202
www.nj.gov/health/rtkweb

Enforces all provisions of the *RTK Act* in public workplaces and *RTK* labeling in private workplaces. The Program prepares Hazardous Substance Fact Sheets, the *RTK* brochure, and other materials to increase awareness of hazardous chemicals and help employers comply with the *RTK Act*. Printed materials are available upon request. Many are translated into Spanish.

New Jersey Department of Environmental Protection
Office of Pollution Prevention and *Right to Know*
MC 22-03C, PO Box 420
Trenton, NJ 08625-0420
(609) 292-6714
www.nj.gov/dep/opp/pc/crki/

Enforces the community provisions of the *RTK Act* in the private sector (except for labeling). The Department is also responsible for implementing Title III (Emergency Planning and *Community Right to Know*) of the federal Superfund Amendments and Reauthorization Act (SARA), which establishes requirements for industry regarding emergency planning and reporting of hazardous chemicals.

New Jersey Department of Labor and
Workforce Development
Office of Public Employees Occupational Safety
and Health
PO Box 386
Trenton, NJ 08625-0386
(609) 292-7036

http://ind.state.nj.us/ise/employee/Public_Employees_OSH.html

Collects *RTK* fees from private employers and investigates complaints by public employees who suspect they are being discriminated against for exercising their rights under the *RTK Act*.

How to Obtain Information Locally

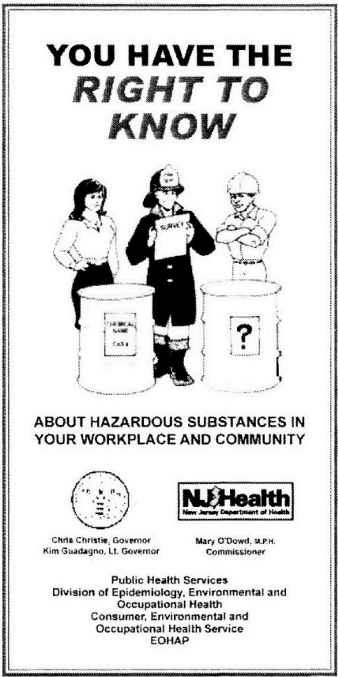
You can obtain copies of the *Right to Know Survey*, *Community Right to Know Survey*, and Hazardous Substance Fact Sheets from your designated *Right to Know* county agency listed below:

Atlantic.....	(609) 645-5971	Ext. 4376
Bergen.....	(201) 634-2785	
Burlington.....	(609) 266-5521	Ext. 5521
Camden.....	(856) 374-6051	
Cape May.....	(609) 463-6413	
Cumberland.....	(856) 327-7602	Ext. 7129
Essex.....	(973) 497-9401	
Gloucester.....	(856) 218-4103	
Hudson.....	(201) 223-1133	
Hunterdon.....	(908) 788-1110	
Mercer.....	(609) 278-7165	
Middlesex.....	(732) 745-8480	
Monmouth.....	(732) 431-7456	
Morris.....	(973) 631-5492	
Ocean.....	(732) 341-9700	Ext. 7477
Passaic.....	(973) 225-3651	
Salem.....	(856) 935-7510	Ext. 8489
Somerset.....	(908) 231-7506	
Sussex.....	(973) 579-0370	
Union.....	(608) 654-9730	
Warren.....	(908) 475-7960	

YOU HAVE A
RIGHT TO KNOW
ABOUT HAZARDOUS
SUBSTANCES
IN YOUR
WORKPLACE AND
COMMUNITY.
USE IT.

11-3

3-21



The Right to Know Act

The New Jersey Worker and Community *Right to Know* Act requires public and private employers to provide information about hazardous substances at their workplaces. The Act:

- informs public employees about chemical hazards at their workplace so they can work safely with these hazardous substances;
- helps firefighters, police, and other emergency responders adequately plan for and respond to incidents such as fires, explosions or spills;
- provides data for monitoring and tracking hazardous substances in the workplace and the environment.

How the Act Can Protect You and Your Family

Harmful substances may be present at your workplace and at other workplaces in your community, or may be released into the environment. They may also be carried home to your family on your work clothes.

Hazardous substances can cause irritation to the eyes, skin, and respiratory tract. Exposure to hazardous substances has been linked to health problems such as cancer, birth defects, and heart, lung and kidney diseases. These diseases may develop many years after exposure. As a public employee, you can obtain information about hazardous substances that may harm you or your family from documents in your workplace's *Right to Know (RTK)* central file.

Knowing about hazardous substances and how they harm you can help you obtain the proper diagnosis and treatment if you should become sick. More importantly, awareness about hazardous substances and your potential exposure to them can help you make important decisions about your employment.

How the Act Works

Employers covered by the Act must complete surveys listing the names and amounts of hazardous chemicals stored and used at their workplaces.

Right to Know Surveys are completed by public agencies and sent to the New Jersey Department of Health (NJDOH).

Community Right to Know Surveys are completed by private employers and sent to the New Jersey Department of Environmental Protection (NJDEP).

Copies of these surveys are required to be sent to local fire and police departments, designated *Right to Know* county agencies (mostly county health departments), and local emergency planning committees.

Public employers are required to label containers according to the New Jersey *Right to Know* Act and PEOSH¹, and maintain a *RTK* Central File that contains information about hazardous substances at their facilities. Private employers are required to label containers according to OSHA² and the New Jersey *Right to Know* Act.

How Public Employers Comply with the Right to Know Act

Public employers have the responsibility to assist workers in learning about the hazards of the products they work with. The employer must:

- Complete the *Right to Know Survey*
- Label Containers
- Create and Maintain a *Right to Know* Central File
- Post the *Right to Know* Poster

Public employees can obtain a copy of the survey by contacting their employer, the NJDOH, or the designated county agencies at the numbers listed in this brochure.

1. PEOSH is the New Jersey Department of Health and Senior Services.
2. OSHA is the Occupational Safety and Health Act.

How to Use Your Workplace Rights to Protect Your Health

The *Right to Know Act* gives employees certain rights and access to information about hazardous chemicals in their workplace. This information, kept in the *RTK* central file, informs workers about the health hazards of chemicals and ways to reduce or prevent their exposure to the chemical hazards. Learn to work safely with chemical hazards to protect your health and the health of your family members. To do so:

- Work only with labeled containers.
- Check your workplace *RTK Survey* to find out which products contain hazardous chemicals.
- Read Material Safety Data Sheets and Hazardous Substance Fact Sheets about the health hazards of the hazardous chemicals in the products. These documents are kept in the *RTK* central file.

You do not have to work with a product if your employer has not given you the ingredient information you requested in writing within five working days. Call the NJDOH for more information before you refuse to work with a product.

You can file a complaint against your employer for not complying with the *RTK Act*. Your name will be kept confidential.

This brochure is being distributed to you as part of your training about hazardous chemicals in the workplace under the PEOSH Hazard Communication Standard. For more information about training, contact Public Employees Occupational Safety and Health (PEOSH), New Jersey Department of Health, PO Box 368, Trenton, NJ 08625-0368, (609) 984-1863, www.nj.gov/health/eh/peoshweb.

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APPENDIX B



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1. The design considerations, work practices, and ammunition used at existing and new indoor firing ranges operated by public employers;

2. Public employees assigned to work at an indoor firing range; and
3. Public employers who operate indoor firing ranges and who are responsible for complying with the provisions of this standard.

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12:100-8.2 Definitions

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

"Bounce back" means the occasion when hard zinc bullets bounce off the surface of the bullet trap.

"Bullet trap" means the area of the firing range furthest from the shooting area which is equipped with plates to capture the expended bullets after firing.

"HEPA" means a high efficiency particulate absolute filter which is 99.97 percent efficient for 0.3 microns.

"Indoor firing range" means the room inside a building which contains the shooting booths and is used for the shooting of firearms.

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12:100-8.3 Lead standard

The Lead Standard, Section 1910.1025 of 29 CFR Part 1910, adopted by reference at N.J.A.C. 12:100-4.2(a) 20, shall be applicable at indoor firing ranges.

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12:100-8.4 Ammunition

(a) The ammunition used in indoor firing ranges during practice sessions shall be zinc bullets or nylon jacketed or copper jacketed bullets. Service ammunition routinely used by the public employer may be used for qualification sessions.

(b) When selecting the type of ammunition to be used to comply with (a) above, consideration shall be given to a potential problem of "bounce back" of the much harder zinc bullet from the bullet trap in some ranges. Consideration shall be given to the potential eye hazard to shooters which may make the use of the zinc bullets unsafe unless changes are made in the bullet trap.

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12:100-8.5 Ventilation system

(a) The minimum air velocity shall be 50 feet per minute at the firing line. An optimum air velocity should be 75 feet per minute at the firing line.

(b) Filtered and conditioned air shall be introduced behind the firing line to guarantee an evenly distributed flow of air through the shooting positions. Supplied air inlets should be placed approximately 15 feet behind the shooter's position.

(c) The entire range facility shall be maintained at a slightly negative pressure with respect to adjacent areas to prevent the escape of contaminants. Exhaust air shall exceed supplied air by at least 10 percent. For maximum efficiency, exhaust ducts should be located behind and at the apex of the bullet trap. An alternative location is to place the exhaust ducts on the side walls slightly in front of the apex of the bullet trap.

(d) A minimum down range conveying velocity of 35 feet per minute shall be maintained. When the 75 feet per minute rate is used, a minimum of 25 percent of the air should be exhausted 15 to 20 feet down range of shooting position and the remaining 75 percent at the bullet trap. When the 50 feet per minute rate is used, 100 percent of the air should be exhausted down range at the bullet trap.

(e) Each range shall have its own ventilation system to prevent the circulation of contaminated air to other areas of the building.

(f) The supply and exhaust systems shall be electrically interlocked, thereby eliminating an error in turning one system on and not the other. The system shall operate on one fan speed only.

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12:100-8.6 Noise exposure

(a) The Occupational Noise Exposure Standard, Section 1910.95 of 29 CFR Part 1910, adopted by reference at N.J.A.C. 12:100-4.2(a)6, shall be applicable at indoor firing ranges.

(b) To minimize the effect of peak sound pressure levels on individuals in the indoor range, all reflecting walls should be covered with high efficiency sound absorbing material. The coverings should be designed to permit easy cleaning and access to the acoustical material for periodic replacement.

(c) The floors directly behind the shooting booths should be covered with acoustical flooring.

(d) Firing range control rooms should be acoustically treated to reduce noise levels.

(e) The bullet trap should not be anchored or attached to any structural support for the building.

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12:100-8.7 Water drains

Each firing range should be equipped with a floor drain and trap to facilitate cleaning by a wet method. The drain location should be approximately 20 feet down range of the firing line. The floor should slope two to three inches toward the drain.

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12:100-8.8 Work practices

(a) The ventilation system shall be in operation at all times while the range is in use and during clean-up.

(b) The range shall be cleaned by vacuum or a wet method. The use of a hand broom shall be prohibited. Vacuum cleaners shall be equipped with high efficiency particulate filters (HEPA) or the equivalent.

(c) At all times while cleaning, repairing, or reclaiming lead in the bullet trap, a National Institute of Occupational Safety and Health approved half-mask, air purifying respirator equipped with N-100 filters and disposable coveralls shall be the minimum personal protective equipment worn by all employees performing one or more of these tasks.

(d) Proper ear protection shall be provided for and worn by all individuals inside the firing range. The ear protectors shall be selected on the basis of offering a noise reduction rating of at least 20 decibels. In cases where the noise decibel level is at or above 100 decibels, both plugs and muffs shall be worn simultaneously.

(e) Ear plugs, when worn, shall be properly fitted.

(f) A hearing conservation program shall be instituted and yearly audiometric examinations shall be provided to the firing range officers and instructors.

(g) Eating, drinking, or smoking in the range shall be prohibited.

(h) A specific schedule shall be established to perform maintenance and repair work to keep the range facilities operational and free of hazardous conditions.

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SUBCHAPTER 10. STANDARDS FOR FIREFIGHTERS>br>12:100-10.1 Scope; standards information

(a) This subchapter shall apply to all public employment as provided below:

1. This subchapter contains requirements for the organization, training, and personal protective equipment of fire service organizations whenever an employer establishes them.
2. The requirements of this subchapter shall apply to all fire service members in the public sector performing structural fire fighting.

(b) This subchapter shall not be applicable to:

1. Construction, agriculture and maritime employment;
2. Airport crash rescue; or

3. Forest firefighting operations.

(c) The CGA and NFPA standards incorporated in this subchapter by reference may be obtained by contacting the issuing entities at the addresses listed in N.J.A.C. 12:100-17.3.

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12:100-10.2 Definitions

(a) The following words and terms, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise.

"CGA" means Compressed Gas Association.

"Confined space" means the term as defined at 29 CFR 1910.146(b).

"Damaged equipment" means equipment which has been affected by external forces such as, but not limited to, mechanical, thermal, chemical or hydraulic, to an extent whereby the equipment no longer performs its original function to the extent required for the users' safety.

"Education" means the process of imparting knowledge or skill through systematic instruction.

"Enclosed structure" means a structure with a roof or ceiling and at least two walls which may present hazards to employees, such as accumulations of smoke, toxic gases and heat, similar to those found in buildings.

"Fire brigade" means an organized group of firefighters who are public employees who have an obligation to fight fires but who may be assigned to other duties.

"Fire department" means an organized group of employees organized by a public employer who are knowledgeable, trained and skilled in basic firefighting operations.

"Firefighter" means a member of the fire service who engages in the physical activity of rescue, fire suppression or both, in buildings, enclosed structures, vehicles, vessels or like properties that are involved in a fire or emergency situation.

"Fire service" means a fire department or fire brigade.

"Helmet" means a head protective device consisting essentially of a shell, an energy absorbing system, a retention system, fluorescent retro-reflective markings, ear covers and faceshield.

"Interior structural firefighting" means the physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage.

"NFPA" means the National Fire Protection Association.

"Overhaul" means the final control of a fire with suppression of the main body of the fire and other pockets of fire, searching for victims and performing salvage operations.

"Positive-pressure apparatus" means an open or closed-circuit apparatus in which the pressure inside the face piece in relation to the immediate environment is positive during both inhalation and exhalation.

"Quick disconnect valve" means a hand-operated device which provides a means for connecting and disconnecting the air cylinder to the self-contained breathing apparatus.

"Remanufactured" means the complete dismantling and reassembly of the fire apparatus body with or without removal from the chassis during the process.

"Respiratory protective device" means a breathing device designed to protect the wearer from an oxygen-deficient or hazardous atmosphere.

"SCBA" means self-contained breathing apparatus.

"Self-contained breathing apparatus" means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

"Service life" means the period of time that a respirator has been rated to provide protection to the wearer.

"Unserviceable" means past useful life of garment or protective gear, or those that have been declared unsafe.

"Vapor-barrier" means that material used to substantially prevent or inhibit the transfer of water, corrosive liquid, steam or other hot vapors from the outside of a garment to the wearer's body.

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12:100-10.3 Organization, training and education

(a) The employer shall prepare and maintain a statement or written policy which contains the following:

1. The basic organizational structure of the fire service;
2. The expected number of members in the fire service; and
3. The functions that the fire service is to perform.

(b) The organizational statement shall be available for inspection by the Commissioner of Labor and Workforce Development and by the employees or their designated representative.

(c) Training and education requirements are as follows:

1. The employer shall provide training and education for all fire service members commensurate with those duties and functions that fire service members are expected to perform. Such training and education shall be provided to fire service members before they perform fire service emergency activities. Fire service leaders and training instructors shall be provided with training and education, which is more comprehensive than that provided to the general membership of the fire service.
2. The employer shall assure that training and education is conducted frequently enough to assure that each member of the fire service is able to perform the member's assigned duties and functions satisfactorily and in a safe manner so as not to endanger fire service members or others. All fire service members shall be provided with training at least annually. In addition, fire service members who are expected to perform interior structural fire fighting shall be provided with an education session or training at least quarterly.
3. The quality of the training and education program for fire service members shall be similar to those conducted by such fire training schools as the Maryland Fire and Rescue Institute; Iowa Fire Service Extension; West Virginia Fire Service Extension; Georgia Fire Academy; New York State Department, Fire Prevention and Control; Louisiana State University Firemen Training Program, or Washington State's Fire Service Training Commission for Vocational Education. (For example, for the oil refinery industry with its unique hazards, the training and education program for those fire service members shall be similar to those conducted by Texas A & M University, Reno Fire School, or the Delaware State Fire School.)
4. The employer shall inform fire service members about special hazards such as storage and use of flammable liquids and gases, toxic chemicals, radioactive sources and water reactive substances to which they may be exposed during fire and other emergencies. The fire service members shall also be advised of any changes that occur in relation to the special hazards. The employer shall develop and make available for inspection by fire service members written procedures that describe the actions to be taken in situations involving the special hazards and shall include these in the training and education program.
5. The employer shall provide each member of the fire service training in HAZMAT Operations Level I, Bloodborne Pathogens, Incident Management System Training Orientation (I-100), and where applicable, Confined Space Entry Rescue Operations, Trench Rescue Operations and High Angle and Technical Rescue Techniques. All training shall be consistent with the applicable PEOSH Standard.
6. The employer shall comply with the Hazard Communications Standard, N.J.A.C. 12:100-7, and relevant parts of the New Jersey Worker and Community Right to Know Act.

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12:100-10.4 Personnel; limitations on ability to perform

(a) The employer shall assure that employees who are expected to do interior structural firefighting are physically capable of performing duties, which may be assigned to them during emergencies.

1. Prior to appointment as a structural firefighter, all individuals shall have successfully passed a medical evaluation, which meets the Medical Evaluation Protocol required under the Respiratory Protection Program Standard, 29 CFR 1910.134. Failure to pass said examination shall exclude the individual from serving as a structural firefighter.

(b) The employer shall assure that compliance with (a) above shall be accomplished in conformity with the provisions of the Americans with Disabilities Act of 1990.

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12:100-10.5 Protective clothing

- (a) The employer shall provide, at no cost to the employee, and assure the use of, protective clothing which complies with this subchapter.
- (b) Firefighters performing interior structural firefighting and overhaul shall be provided with, and required to wear, the equipment covered in this subchapter.
- (c) The employer shall assure that:
1. Protective clothing protects the head, body and extremities, and consists of at least the following components: body protection, eye, face and head protection;
 2. Protective clothing ordered or purchased after the effective date of this subchapter shall comply with this subchapter; and
 3. Firefighters wear foot, leg and body protective clothing complying with this subchapter.

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12:100-10.6 Protective clothing; foot and leg protection

- (a) Foot and leg protection shall comply with this section for all firefighters.
1. Protective footwear shall comply with NFPA 1974-1987, Protective Footwear for Structural Firefighting.

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12:100-10.7 Protective clothing; body protection

- (a) Body protection shall comply with this section for all firefighters.
- (b) Body protection shall be achieved by the wearing of a fire resistive coat and bunker pants, both of which shall be at least equivalent to NFPA 1971-1986, Protective Clothing for Structural Firefighting, incorporated herein by reference. For career firefighters, body protection must be worn in combination with a station/work uniform or apparel complying with (c) below. If the employer issues or requires the wearing of uniforms for volunteer firefighters, the uniform must comply with (c) below.
- (c) Station/work apparel shall be provided to the career firefighter as follows:
1. The performance, construction and testing of station/work uniforms shall be at least equivalent to NFPA 1975-1985, Station/Work Uniforms for Firefighters, incorporated herein by reference; or
 2. Apparel issued to the firefighter must be of a non-meltable material, such as cotton.

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12:100-10.8 Protective clothing; hand protection

- (a) Hand protection shall consist of protective gloves or a glove system which will provide protection against cuts, punctures and heat penetration.
- (b) The performance, construction, and testing of gloves for structural firefighters shall be at least equivalent to NFPA 1973-1988, Gloves for Structural Fire Fighting incorporated herein by reference.

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12:100-10.9 Protective clothing; head, eye and face protection

- (a) Head protection shall consist of a protective head device with ear flaps and chin strap which meet the performance, construction and testing requirements of 29 CFR Part 1910.156(e)(5) or NFPA 1972-1987, Helmets for Structural Fire Fighting.
- (b) Full facepieces, helmets, goggles or hoods of breathing apparatus which comply with 29 CFR 1910.134 and N.J.A.C. 12:100-10.10 shall be deemed to comply with (a) above.
- (c) A full protective hood shall be provided for the firefighter that meets the performance, construction, and testing requirements of NFPA 1971-1991, Protective Clothing for Structural Fire Fighting.

1. Firefighters shall be provided with a full protective hood provided that if the wearing of the hood interferes with the proper fit of the helmet, a full protective hood need not be provided until the helmet becomes unserviceable and is replaced.

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12:100-10.10 Respiratory protection devices

(a) The employer shall ensure that respirators are provided to, and used by firefighters, and that the respirators meet the requirements of 29 CFR 1910.134 and this section.

(b) Approved self-contained breathing apparatus with a full-facepiece, or with approved helmet or hood configuration, shall be provided to, and worn by, firefighters as follows:

1. While engaged in interior structural firefighting;
2. While working in confined spaces where toxic products of combustion or an oxygen deficiency may be present;
3. During emergency situations involving toxic substances; and
4. During all phases of firefighting and overhaul.

(c) The employer shall assure that:

1. Respirators ordered or purchased after January 4, 1993 shall be at least equivalent to NFPA 1981-1987, Open-Circuit Self-Contained Breathing Apparatus for Fire Fighters, incorporated herein by reference; and
2. All firefighters shall wear respirators complying with this subchapter except that existing respirators meeting the previous OSHA standards that are superseded by this subchapter may continue to be worn until such time as the respirator becomes unserviceable.

(d) The employer shall establish and maintain a respiratory protection program, which includes the requirements of 29 CFR 1910.134, Respiratory Protection, with amendments published in the Federal Registry through April 23, 1998 and any subsequent amendments thereto, are incorporated and adopted herein by reference as standards applicable to firefighters for respiratory protection.

(e) Existing respirators meeting the previous OSHA standards that are superseded by this subchapter:

1. May be used with approved cylinders from other approved self-contained breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus shall meet the United States Department of Transportation (49 CFR Parts 100 through 199) and National Institute for Occupational Safety and Health (42 CFR Part 84) criteria.
2. Can be switched from a demand to a positive pressure mode. However, such apparatus shall be in the positive pressure mode when firefighters are performing interior structural firefighting operations or overhaul.

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12:100-10.11 Life-safety rope, harnesses and hardware

(a) This section is intended to apply to fire departments that train and perform rope rescue services. All employees that are required by the fire department to participate in such rescue services shall be provided with the proper equipment meeting the requirements of this section.

(b) The employer shall provide, at no cost to the employee, and assure the use of, life-safety rope, harnesses, and hardware which comply with this section.

(c) The employer shall assure that the life-safety rope, harnesses and hardware complying with this section are used to support fire service personnel during rescue, firefighting, and other emergency operations, or during training exercises.

(d) The performance, construction and testing of ropes, harnesses, and hardware for firefighters shall be at least equivalent to NFPA 1983-1985, Fire Service Life-Safety Rope, Harnesses and Hardware, incorporated herein by reference.

(e) Life-safety rope, harnesses and hardware need only be provided in those departments that perform rope rescue services and to employees who perform such services.

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12:100-10.12 Personal alert safety system

- (a) The employer shall provide, at no cost to the employee, and assure the use of, a personal alert safety system which complies with this section.
- (b) The employer shall assure that all firefighters wear personal alert safety systems that comply with this section by January 4, 1994, except that personal alert safety systems complying with NFPA 1982-1983, Personal Alert Safety Systems (PASS) for Fire Fighters, may continue to be used until they become unserviceable.
- (c) The performance, construction and testing of a personal alert safety system for a firefighter shall be at least equivalent to NFPA 1982-1988, Personal Alert Safety Systems (PASS) for Fire Fighters, incorporated herein by reference.
- (d) Approved personal alert safety systems shall be provided and worn by the firefighter as follows:
1. While engaged in interior structural firefighting;
 2. While working in confined spaces;
 3. During all phases of overhaul; and
 4. The PASS device shall be attached to the exterior of the firefighter's turnout gear.

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12:100-10.13 Hearing protection

- (a) This section is intended to provide hearing protection to the firefighter in non-emergency situations. An example of a non-emergency situation requiring hearing protection to the employee would be during the testing of equipment creating a noise level exceeding 90 decibels (dBa). The hearing conservation program described should be in writing and may be incorporated into standard operating procedures (SOP).
- (b) The fire department shall provide hearing protection for all members when they are exposed to noise in excess of 90 dBa from power tools or equipment, except for situations where the use of hearing protection devices would create an additional hazard to the user.
- (c) The fire department shall engage in a hearing conservation program to identify and reduce or eliminate potentially harmful sources of noise in the work environment.
- (d) The provisions of 29 CFR 1910.95, Occupational Noise Exposure, incorporated at N.J.A.C. 12:100-4 are applicable to this subchapter.

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12:100-10.14 Filling air cylinders

- (a) Air cylinders for respiratory equipment shall be filled only by trained personnel.
- (b) The charging station shall be equipped with proper facilities to ensure the safety of the charging station operator and nearby personnel.

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12:100-10.15 Fire apparatus operations

- (a) Whenever a fire apparatus leaves the fire station in response to a fire alarm, all firefighters, except the driver of the fire apparatus, shall have donned their protective clothing before the apparatus is in motion. The term "fire apparatus" does not include an automobile.
- (b) The employer shall provide restraining devices for all firefighters aboard a fire apparatus. Restraining devices may include protective seating, seatbelts, or vehicle harnesses for all firefighters aboard.
- (c) All fire apparatus purchased and/or remanufactured after January 4, 1993 shall provide enclosed seating with seatbelts for all personnel riding on the apparatus, complying with the following standards, incorporated herein by reference:
1. NFPA 1901-1991 Pumper Fire Apparatus;
 2. NFPA 1902-1991 Initial Attack Fire Apparatus;
 3. NFPA 1903-1991 Mobile Water Supply Fire Apparatus; and
 4. NFPA 1904-1991 Aerial Ladder and Elevating Platform Fire Apparatus.

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12:100-10.16 Maintenance of firefighter equipment

- (a) Firefighting equipment required under this subchapter shall be maintained and inspected by the employer at least annually to ensure the safe operational condition of the equipment. Damaged equipment or equipment found to be in unserviceable condition shall be removed from service and replaced.
- (b) All fire department aerial apparatus is to be subject to visual inspection, operational tests and load tests at least annually in accordance with NFPA 1914-1991, Testing Fire Department Aerial Devices. Complete inspections and tests including, the non-destructive testing defined in NFPA 1914-1991, Testing Fire Department Aerial Devices, shall be conducted whenever visual inspection or load testing indicates a potential problem or at least every five years. Any device that fails a test shall be immediately removed from service and shall not be returned to service until properly repaired and retested. In addition, pumper fire apparatus shall be inspected at least annually in accordance with criteria of NFPA 1911-1997; initial attack fire apparatus shall be inspected at least annually in accordance with criteria of NFPA 1911-1997; and mobile water supply fire apparatus shall be inspected at least annually in accordance with criteria of NFPA 1911-1997. Each inspection shall include road-worthiness and safety equipment.

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Chapter Expiration Date: Chapter 110, Occupational Safety and Health Procedural Standards for Public Employees, expires on January 27, 2030.

CHAPTER 110

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.

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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.

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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.

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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) For all references to employees, the Commissioner, or any other person: whenever the male or female gender is used it shall be construed to include any gender and no gender.

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12:110-1.5 (Reserved)

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12:110-1.7 (Reserved)

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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 and Workforce Development 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" means the Commissioner of the New Jersey Department of Health or his or her designee.

"Compliance officer" means the person authorized by:

1. The Commissioner of Labor and Workforce Development to conduct safety inspections; or
2. The Commissioner of Health 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.

"Employee" means any public employee, any person holding a position by appointment or employment in the service of an "employer" as that term is used in the Act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under this Act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. shall be excluded from the coverage of the Act.

"Employee representative" means a "representative" as that term is defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

"Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of:

1. The State, or any department, division, bureau, board, council, agency or authority of the State, except any bistate agency; or
2. Any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purpose district created pursuant to law.

"Establishment" means a single physical location where business is conducted or where services or operations are performed by public employees, such as a regional office, area office, installation or facility.

"Field site" means a single physical location where an employer performs services or operations but does not maintain an office or facility.

"First aid" means any one-time treatment and any follow-up visit for the purpose of observation of minor wounds, scratches, cuts, burns, or splinters, which do not ordinarily require medical care. Such one-time treatment and follow-up visit for the purpose of observation is considered first aid even though provided by a physician or registered professional personnel.

"Imminent danger" means any condition or practice in any workplace which is such that a danger exists which could reasonably be expected to cause death or serious physical harm.

"Inspection" means any on-site visit of an employer's workplace, establishment or field site either to ensure that employers are in compliance with the Act or to investigate reported safety or health incidents where work is performed by an employee.

"Lost workdays" means the number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his or her normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.

"Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a

physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional person.

"Other than serious" means a hazard, violation or condition which cannot reasonably be predicted to cause death or serious physical harm to exposed employees but does have a direct and immediate impact on an employee's safety or health.

"Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in:

1. Fatalities, regardless of the time between the injury and death or the length of the illness; or
2. Lost workday cases, other than fatalities, that result in lost workdays; or
3. Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

"Regulatory" means a violation of procedural rules or regulations, such as recordkeeping or posting, that would not affect the health or safety of an employee.

"Review Commission" means the Occupational Safety and Health Review Commission created by N.J.S.A. 34:6A-42. See also N.J.A.C. 12:112.

"Serious" means a hazard, violation or condition evidencing a substantial probability that death or serious physical harm could result.

"Serious injury" means any occupational injury or illness which requires treatment beyond first aid.

"Willful violation" means any situation in which an employer had knowledge of a hazard, condition or practice in an establishment or field site which could reasonably be expected to cause death or serious physical harm and knowingly and intentionally elects not to abate the hazard, condition or practice in accordance with standards encompassed by the Act.

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SUBCHAPTER 3. ADMINISTRATION

12:110-3.1 Scope of subchapter

This subchapter sets forth the responsibilities and rights for the procedures developed for the safety and health programs under the Act.

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12:110-3.2 Program direction

The Commissioner, in consultation with the Commissioner of Health and/or the Commissioner of Community Affairs, as required, shall be the administrator of the New Jersey Public Employees' Occupational Safety and Health Act.

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12:110-3.3 Duties of employer

(a) Every employer shall provide each of his employees with employment and a place of employment which are free from recognized hazards which may cause serious injury, physical harm or death to his employees.

(b) Every employer shall comply with the occupational safety and health standards promulgated under the Act.

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12:110-3.4 Employee responsibilities and rights

(a) Every public employee shall comply with the occupational safety and health standards and all regulations promulgated under the Act which are applicable to his or her own actions and conduct.

(b) Each employee shall comply with all orders issued by the employer in accordance with the Act and with this chapter which are applicable to his or her own actions and conduct.

(c) Employees shall use safety equipment, personal protective equipment and other devices and procedures which have been deemed

necessary by the employer for their protection.

(d) Employees or employee representatives shall have the right to report unsafe and unhealthful working conditions to the employer.

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12:110-3.5 Dissemination of program information

(a) Copies of the Act, these rules, N.J.A.C. 12:100, Safety and Health Standards for Public Employees, and applicable standards adopted by reference therein and details of the employer's occupational safety and health program shall be made available by the employer upon request to employees or employee representatives for review.

(b) A copy of the employer's written occupational safety and health program applicable to the establishment shall be made available to each supervisor and to employee representatives.

(c) Each employer shall post conspicuously in each establishment, and keep posted, the Department of Labor and Workforce Development's poster informing employees of the provisions of the Act. Such poster shall be posted in each establishment in places accessible to all employees. Each employer shall take steps to ensure that any such poster is not altered, defaced, or covered by other material.

1. In the event that an employer has an internet site or intranet site for exclusive use by its employees and to which all employees have access, display of the poster on the employer's internet or intranet site shall satisfy the conspicuous posting requirement set forth in this subsection.

(d) Employers should promote employee awareness of occupational safety and health policies through information channels, such as newsletters, bulletins, handbooks and employee orientations and training or education programs.

(e) Copies of the Act and all rules shall be available at the Division of Public Safety and Occupational Safety and Health, New Jersey Department of Labor and Workforce Development. The employer shall obtain copies of these materials and make them available upon request to any employee or his or her authorized representative for review in the establishment where the employee is employed within 10 working days of the day the request is made.

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SUBCHAPTER 4. INSPECTIONS, ORDERS TO COMPLY, AND PENALTIES

12:110-4.1 Scope of subchapter

This subchapter establishes procedural rules on inspections, orders to comply, and penalties.

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12:110-4.2 Authority for inspection

(a) The Compliance Officer shall enter without delay and at reasonable times any establishment or field site of any employer where work is performed by an employee where there is reason to believe that a violation of a safety or health standard exists and to conduct such investigations as he or she may deem necessary.

(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.

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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, 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 pursuant to the Act, without authority from the Commissioner, the Commissioner of Health, 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.

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12:110-4.4 Conduct of inspections

(a) Subject to the provisions at 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, 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.

(i) Whoever knowingly makes any false statements, representation or certification, verbally or in writing, in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter shall be liable for an administrative penalty pursuant to N.J.A.C. 12:110-4.11.

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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.

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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.

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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, 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 to the employer or his or her agent by the Commissioner, Commissioner of Health, 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 and Workforce Development or the Department of Health.

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

(c) If, upon receipt of the notice at (a) above, the Commissioner, the Commissioner of Health, or their designees, determines that the complaint meets the requirements set forth at (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.

1. Inspections under this section shall not be limited to matters referred to in the complaint.
2. Such on-site inspection, shall be initiated within 24 hours for fatality or imminent danger situations, within three working days for potentially serious hazards, and within 10 working days for other than serious or regulatory situations.

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12:110-4.8 Inspection not warranted and informal review

(a) If the Commissioner, Commissioner of Health, or their designees, determine that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint pursuant to N.J.A.C. 12:110-4.7, the complaining party shall be notified, in writing, of such determination.

1. The complaining party may obtain review of such determination by submitting a written statement of position to the Commissioner of Labor and Workforce Development and, unless the complaining party elects anonymity, providing the employer with a copy of such statement by certified mail.
2. When notified of the request by the complaining party or the Department of Labor and Workforce Development, the employer may submit an opposing written statement of position to the Commissioner and, at the same time, unless the complaining party has elected anonymity, provide the complaining party with a copy of such statement by certified mail.
3. The complaining party or the employer may request an informal conference to attempt to resolve the dispute. If a party requests an informal conference or the Department of Labor and Workforce Development determines that an informal conference would be useful and not violative of a request for anonymity, an informal conference shall be scheduled and conducted by the Department of Labor and Workforce Development within 30 days of receipt of the request or appeal. The Department of Health shall be consulted when the matter under review involves a determination from the Department of Health.
4. After considering all views presented, the Commissioner shall affirm, modify, or reverse the determination and furnish the complaining party and the employer written notification of his or her decision and the reasons therefor. The decision of the Commissioner shall be final and not subjected to further review.

(b) If the Commissioner or the Commissioner of Health determines that an inspection is not warranted because the requirements at N.J.A.C. 12:110-4.7(a) have not been met, he or she shall notify the complaining party, in writing, of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements at N.J.A.C. 12:110-4.7(a).

(c) All procedures described in this section involving health issues shall be conducted in consultation with the Commissioner of Health.

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12:110-4.9 Imminent danger

(a) As soon as a Compliance Officer concludes, on the basis of an inspection, that conditions or practices exist in any establishment or field site which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, he or she shall inform the affected employees and employers of the danger. The Compliance Officer shall also inform the affected employees and employers that he or she is recommending a civil action to abate such conditions or practices and for other appropriate relief in accordance with the Act.

(b) Any order issued with respect to an imminent danger may require such steps to be taken as may be necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists.

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12:110-4.10 Order to comply

(a) If the Commissioner determines that an employer has violated a provision of the Act or a safety or health standard or any rules promulgated pursuant to the Act, he or she shall, within 30 days of the completion of inspection processes conducted by the Department of Labor and Workforce Development or receipt of a certification of a violation from the Department of Health, issue to the employer a written Order to Comply, which shall describe:

1. The nature of each violation, including a reference to the provision of the section, standard, regulation or order alleged to have been violated; and
2. An abatement date for each violation.

(b) If the Commissioner of Health determines that an employer has violated a provision of the Act or a health standard, he or she shall, within 30 days of the completion of inspection processes conducted by the Department of Health, certify to the Commissioner that a violation exists within his or her jurisdiction and the nature of the violation, the provision of the section, standard, regulation, or order alleged to have been violated and an abatement time frame in order for the Commissioner to issue an Order to Comply.

(c) When the Commissioner issues to an employer an Order to Comply, the employer shall post such Order to Comply or a copy thereof at or near each location of the violation cited in the Order to Comply, or, if it is not practicable because of the nature of the employer's operations, where it will be clearly visible to affected employees. The Order to Comply shall remain posted until each violation cited is abated or for 15 working days, whichever is longer. The Commissioner shall make such Order to Comply available to employee representatives and affected employees and shall make the Order to Comply available to the public upon written request.

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12:110-4.11 Penalties

(a) If the time for compliance with an Order to Comply issued pursuant to this section elapses, and the employer has not made a good faith effort to comply, the Commissioner shall issue a second Order to Comply imposing a civil administrative penalty of up to \$ 7,000 per day for each violation not abated. Penalties imposed under this section may be recovered with costs in a civil action commenced by the Commissioner by a summary proceeding under The Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. in the Superior Court, county district court, or a municipal court, all of which shall have jurisdiction to enforce the Penalty Enforcement Law in connection with the Act.

1. If the violations are of a continuing nature, each day during which the violation continues after the date given for compliance in the Order to Comply shall constitute an additional separate and distinct offense.

(b) Each Order to Comply citing a failure to correct a violation and a proposed penalty shall state that it shall be deemed to be the final order of the Commissioner and not subject to review by any court or agency unless, within 15 working days from the date of issuance of the order, the employer notifies the Commissioner or his or her designee in writing that he intends to contest the proposed penalty before the Review Commission.

(c) The Commissioner may compromise and settle any claim for a penalty pursuant to this section in such amount as, in the discretion of the Commissioner, may appear appropriate and equitable under all of the circumstances, where the employer satisfies the Commissioner that such violation had been eliminated or removed or that such order had been met or satisfied, as the case may be.

1. In any claim involving investigations conducted by the Department of Health, the Commissioner shall make the determination as to the compromise or settlement of the claim in consultation with the Commissioner of Health.

(d) Penalties shall be based upon factors such as the gravity of each violation, the probability that an injury or illness would result from the continuance of the violation, the good faith efforts of the employer to comply, the presence of meaningful safety and health programs and the history of previous violations. The penalty structure adopted by the United States Secretary of Labor pursuant to the "Occupational Safety and Health Act of 1970" shall be a factor utilized in penalty assessments.

(e) In determining whether the employer is making a good faith effort to comply, the Commissioner of Labor and Workforce Development shall consider, among other factors:

1. Whether the employer has implemented appropriate measures to protect employees from an identified hazard, such as modifying work practices or procedures, providing temporary guards or barriers, placarding a hazardous condition or some combination of these methods, pending permanent abatement of the hazard;
2. Prior safety and health compliance record;
3. The presence of meaningful safety and health programs;
4. Contracts, work orders, or similar documents demonstrating that the employer has a plan of action, including specific deadlines, to permanently abate the hazard; and
5. The advice of the Commissioner of Health or his or her designee when the Order addresses health issues.

(f) When an employer submits a written request to delay the issuance of an Order to Comply establishing penalties, the Commissioner, or his or her designee, shall give notice of the request to employee representatives or affected employees, as appropriate, and provide them with a 10 day comment period.

1. If written comments are not received, the Commissioner or his or her designee shall determine whether a delay is warranted based upon the employer's good faith compliance efforts. If the delay is warranted the Commissioner or his or her designee shall issue a written final determination setting forth a date certain by which the employer shall come into compliance.
2. When the Order to Comply addresses health issues, the Commissioner of Health, or his or her designee, shall review the request and give notice to employee representatives or affected employees. Within 10 days of the close of the comment period, the Commissioner of Health, or his or her designee, shall transmit a recommendation, with any comments received, to the Commissioner, or his or her designee, for a final determination.
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.

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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.

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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.

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12:110-4.14 (Reserved)

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SUBCHAPTER 5. RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

12:110-5.1 Scope of subchapter

- (a) 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.
- (b) New Jersey adopted 29 CFR 1904 by reference at N.J.A.C. 12:100-4.2, in the New Jersey Register on September 4, 2001 (33 N.J.R. 2994(a)). All requirements for the recording and reporting of work-related deaths, injuries and illnesses are at 29 CFR 1904 with the following exceptions:
1. All references to the Secretary of Labor shall be deemed to mean the Commissioner of Labor and Workforce Development of the New Jersey Department of Labor and Workforce Development;
 2. All references to OSHA shall be deemed to mean the New Jersey Department of Labor and Workforce Development, Division of Public Safety and Occupational Safety and Health, Office of Public Employees Occupational Safety and Health (PEOSH);
 3. All references to OSHA forms 300, 300A and 301 shall be deemed to mean New Jersey Occupational Safety and Health (NJOSH) forms 300, 300A and 301;
 4. 29 CFR 1904 Subpart B--Scope: New Jersey requires all public employers to record and report work-related deaths, injuries or illnesses as contained in this chapter;
 5. 29 CFR 1904.1, Partial exemption for employers with 10 or fewer employees does not apply to any employer as defined at N.J.A.C. 12:110-2.1;

6. 29 CFR 1904.2, Partial exemption for establishments in certain industries, does not apply to any employer as defined at N.J.A.C. 12:110-2.1; and
7. 29 CFR 1904.39: Reporting fatalities and multiple hospitalization incidents must be reported to the Office of Public Employees Occupational Safety and Health (OPEOSH) through the 24-hour hotline number (800) 624-1644, the 24-hour fax line (609) 292-3749, or in person to the OPEOSH at 225 East State Street, 8th Floor West, Trenton, NJ 08625* within eight hours of the occurrence.

*[*Click here for new Reporting Requirements, Effective January 5, 2015, concerning N.J.A.C. 12:110-5.1\(b\)7.](#)*

**Current address: 1 John Fitch Plaza, 3rd Floor, Trenton, NJ 08625*

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12:110-5.2 to 12:110-5.12. (Reserved)

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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.

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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.

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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.

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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. 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.

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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 and Workforce Development
New Jersey Department of Labor and Workforce Development
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 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 on the New Jersey Department of Labor and Workforce Development website at <http://www.nj.gov/labor/index.shtml> and in a newspaper situated in the geographical area where the variance was requested. It shall be a condition of the order that the affected employers shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

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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 and Workforce Development
 New Jersey Department of Labor and Workforce Development
 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) In applications relating to health standards the Commissioner shall consult with the Commissioner of Health before rendering a decision.

(d) 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 on the New Jersey Department of Labor and Workforce Development website at <http://www.nj.gov/labor/index.shtml> and in a newspaper situated in the geographical area where the variance was requested. 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.

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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 or her 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);
 - iii. In the event that an employer has an internet site or intranet site for exclusive use by its employees and to which all employees have access, posting of the application on the employer's internet or intranet site shall satisfy the conspicuous posting requirement set forth at (a)5ii above; or
 - iv. Providing the application to an employee representative through email shall satisfy the requirement at (a)5i above, that the employer give a copy of the application to each affected employee's employee representative where one exists.
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.

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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.

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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.

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12:110-6.10 (Reserved)

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12:110-6.11 (Reserved)

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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.

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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 pursuant to, or related to, the Act with the employer, the Commissioner of Labor and Workforce Development, the Commissioner of Health, 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 and Workforce Development 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 and Workforce Development or the Department of Health; or
 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.

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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.

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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.

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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.

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12:110-7.6 Remedies

- (a) Warnings, reprimands, or derogatory references resulting from the protected activity which may have been placed in the complainant's personnel file shall be expunged.
- (b) Reinstatement of the employee, back pay, benefits, seniority and reasonable legal costs may be awarded in any successful appeal.
- (c) 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. 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.
 2. 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.
 3. Funds that must be repaid by the employee shall not be considered when calculating back pay.
 4. Back pay shall include items such as overtime pay and holiday premium pay.
- (d) When back pay and benefits are awarded, determination of the actual amounts shall be settled by the parties whenever possible.
- (e) 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.
- (f) 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.

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12:110-7.7 Processing of complaint

- (a) Within 10 days of receipt of the complaint, the Commissioner, or his or her designee, shall make an initial determination based on the information contained therein and upon any personal contact with the complainant, if such had been deemed necessary, to determine whether an adverse action had taken place while the complainant was engaged in a protected activity. Upon the Commissioner's, or his or her designee's, determination that the adverse action appears to have occurred because the complainant engaged in a protected activity, he or she shall provide the complainant and his or her employer with a 20-day period within which to submit written arguments and documentation in support of their position.
- (b) Failure by the complainant to provide additional information requested may result in dismissal of the appeal.
- (c) 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.
- (d) 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.
- (e) 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.

(f) 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.

(g) 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.

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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.

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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 that may be violative of the Act are not corrected by the employer once brought to his or her 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 that have responsibility in the field of safety and health. The employer shall permit the employee to contact the Department of Labor and Workforce Development, the Department of Health, 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 or herself 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 or herself 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 and Workforce Development 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 and Workforce Development or the Department of Health to report the perceived imminent danger prior to performing the assignment, the employer shall not deny the request.

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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.

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SUBCHAPTER 8. ON-SITE CONSULTATION

12:110-8.1 Scope of subchapter

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

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12:110-8.2 Goal and purpose

(a) The Commissioner and the Commissioner of Health 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.

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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.

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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.

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12:110-8.5 Request and scheduling

(a) The Commissioner of Labor and Workforce Development 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.

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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.

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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.

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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.

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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.

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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 Public Safety and Occupational Safety and Health between the hours of 9:00 A.M. and 4:00 P.M. on regular working days:

New Jersey Department of Labor and Workforce Development
Division of Public Safety and Occupational Safety and Health
John Fitch Plaza
Trenton, New Jersey 08625

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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 Public Safety and Occupational Safety and Health
New Jersey Department of Labor and Workforce Development
PO Box 386
Trenton, New Jersey 08625-0386

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Chapter Expiration Date: Chapter 112, Occupational Safety and Health Review Commission Rules of Procedure, expires on July 31, 2030.

CHAPTER 112

SUBCHAPTER 1. GENERAL PROVISIONS

12:112-1.1 Purpose

The purpose of this chapter is to set forth the appeal procedures of the New Jersey Public Employees Occupational Safety and Health Review Commission.

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12:112-1.2 Scope

This chapter shall govern all matters, including uncontested cases, before the Review Commission. Contested cases transmitted to the Office of Administrative Law shall be governed by N.J.A.C. 1:1.

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12:112-1.3 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.

"Chairperson" means the Review Commission member designated by the Governor to serve as chairperson.

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

"Complainant" means the employer, employee or employee representative who has filed a Notice of Contest.

"Day" means a calendar day.

"Employee" means any public employee, any person holding a positions by appointment or employment in the service of an "employer" as that term is used in the Act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under this Act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., shall be excluded from the coverage of the Act.

"Employee representative" means a "representative" as that term is defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

"Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of:

1.

The State, or any department, division, bureau, board, council, agency or authority of the State except any bi-state agency, or
2.

Any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law.

"Non-party" means a person or entity who participates in the Review Commission proceeding as a witness or in amicus curiae capacity.

"Notice" means Notice of Contest.

"Order to comply" means a written directive issued by the Commissioner to an employer as set forth in N.J.S.A. 34:6A-41.

"Party" means either the complainant who is the employer, employee or employee representative who has filed a Notice of Contest with the Commissioner or the Commissioner who is the respondent.

"Proceeding" means any proceeding before the Review Commission.

"Review Commission" means the Occupational Safety and Health Review Commission created by N.J.S.A. 34:6A-42.

"Working day" means any Monday through Friday but shall not include Saturday, Sunday, any Federal holiday or any State holiday. In computing

15 working days, the day of receipt of any notice shall not be included.

"Workplace" means a place where public employees are assigned to work.

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12:112-1.4 Computation of time

(a) In computing any period of time prescribed or allowed in the chapter, the day from which the designated period begins to run shall not be included.

(b) The last day of the period so computed shall be included unless it is a Saturday, Sunday, Federal holiday, or State holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal holiday, or State holiday.

(c) When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, Federal holidays and State holidays shall be excluded in the computation.

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12:112-1.5 Extension of time

Requests for extensions of time for the filing of any document shall be in writing, addressed to the Chairperson of the Review Commission and received in advance of the date on which the document is due to be filed. Extensions of time shall be honored for good cause.

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12:112-1.6 Address of record

(a) The initial document filed by any party or non-party shall contain his or her name, address, and telephone number. Any change in such information shall be communicated promptly in writing to the Review Commission and to all other parties and non-parties.

(b) A party or non-party who fails to furnish such information shall be deemed to have waived his or her right to notice and service under this chapter.

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12:112-1.7 Service and notice

(a) At the time of filing documents, a copy shall be served by the filing party on every other party or non-party.

(b) Service upon a party or non-party who has appeared through a representative shall be made only upon such representative.

(c) Unless otherwise ordered, service may be accomplished by first class mail, by personal delivery or by electronic communication. Service is deemed effected at the time of mailing, at the time of personal delivery or at the time of electronic transmittal.

(d) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the document.

(e) When the complainant is an employer, the employer shall immediately post a copy of the Notice of Contest, where the written order to comply is required to be posted or, a notice in the following form:

(Name of Employer)

This employer has been cited by the Commissioner of Labor and Workforce Development for violation of the Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq. The written order to comply has been contested and will be reviewed by the Occupational Safety and Health Review Commission.

(f) When the complainant is an employee or an employee representative, he or she shall serve a copy of the Notice of Contest on the employer at the time of transmittal to the Commissioner.

(g) When a Notice of Contest is scheduled for consideration by the Review Commission, a copy of the notice of the meeting of the Review Commission shall be posted by the employer at or near the place where the written order to comply is required to be posted.

(h) Where posting is required by the section, such posting shall be maintained until the commencement of the meeting or until earlier disposition.

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12:112-1.8 Filing

(a) Prior to the assignment of a case to the Review Commission, all papers shall be filed with the Commissioner at PO Box 386, Trenton, New Jersey 08625-0386. Subsequent to the assignment of the case to the Review Commission, and before the issuance of its decision, all papers shall be filed with the Review Commission at the above address. Subsequent to the issuance of the decision of the Review Commission, all papers shall be filed with the Chairperson.

(b) Unless otherwise authorized, all filing shall be accomplished by first class mail.

(c) Filing is deemed effected at the time of mailing.

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12:112-1.9 Consolidation

Cases may be consolidated upon the motion of the Chairperson or the Review Commission or upon the motion of any party, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as the administration of the Act require.

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12:112-1.10 Severance

Upon the motion of the Chairperson or the Review Commission, or upon the motion of any party, the Chairperson or the Review Commission may, for good cause, order any proceeding severed with respect to some or all issues or parties.

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SUBCHAPTER 2. PARTICIPATION IN MATTERS BEFORE THE REVIEW COMMISSION

12:112-2.1 Non-party participation

(a) A petition for a non-party to participate as a witness or in an amicus curiae capacity shall be filed at least 10 days before the commencement of the meeting of the Review Commission.

(b) The petition shall set forth the interest of the non-party in the matter before the Review Commission and show that the participation of the non-party will assist in the determination of the issues in question and that the participation of the non-party will not unnecessarily cause delay.

(c) The Chairperson or the Review Commission may grant a petition for participation of a non-party to such an extent and upon such terms as the Chairperson or the Review Commission determines.

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12:112-2.2 Party and non-party representatives

(a) When a meeting is held, any party or non-party may appear in person or through a representative.

(b) A representative of a party or non-party shall be deemed to control all matters respecting the interest of such party or non-party in the matter before the Review Commission.

(c) Nothing contained herein shall be construed to require any representative to be an attorney at law.

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12:112-2.3 Appearances of parties and non-parties

(a) A representative of a party or non-party shall indicate such by signing the first document filed on behalf of the party or non-party in accordance with (b) below, or thereafter by filing a notice of representation in accordance with (c) below.

(b) If the first document filed on behalf of a party or non-party is signed by a representative, the representative shall be recognized as representing that party or non-party. No separate notice of representation is necessary.

(c) Where a representative has not previously appeared on behalf of a party or non-party, he or she shall file a notice of representation with the Chairperson. The notice of representation shall be signed by the representative.

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12:112-2.4 Conduct of parties

(a) All representatives appearing before the Review Commission shall comply with the letter and spirit of ethical conduct.

(b) If an attorney or other representative practicing before the Review Commission engages in unethical or unprofessional conduct or fails to comply with any rule or order of the Review Commission, the Review Commission may, after reasonable notice and an opportunity to show cause to the contrary, take any appropriate disciplinary action, including suspension or disbarment from practice before the Review Commission.

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12:112-2.5 Withdrawals of parties and non-parties

(a) Any counsel or representative of record desiring to withdraw his or her representation shall file a motion with the Chairperson or the Review Commission requesting leave therefor, and showing that prior notice of the motion has been given by him or her to his or her client or counsel or representative, as the case may be.

(b) The motion of counsel or representative to withdraw may, in the discretion of the Review Commission, be denied where it is necessary to avoid undue delay or prejudice to the rights of a party.

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SUBCHAPTER 3. NOTICES AND MOTIONS

12:112-3.1 Title of cases

(a) Cases initiated by a Notice of Contest shall be titled:

(Name of Contestant), Complainant versus Commissioner of Labor, Respondent

(b) The titles listed in (a) above shall appear at the left upper portion of the initial page of any document filed.

(c) The initial page of any document shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Review Commission.

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12:112-3.2 Signing of motions

(a) Motions shall be signed by the filing party or non-party or their representative. The signature of a representative constitutes a representation by him or her that he or she is authorized to represent the party or non-party on whose behalf the action is filed.

(b) The signature of a representative, party or non-party also constitutes a certification that he or she has read the motion, or other paper, that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is arranged by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

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12:112-3.3 Notices of Contest

(a) Immediately upon receipt of notification that the complainant contests the written order to comply issued under the Act, the Commissioner shall notify the Review Commission of the receipt in writing and shall promptly furnish to the Chairperson of the Review Commission copies of any documents or records filed by the complainant and copies of all other documents or records relevant to the contest.

(b) The complainant at the time of the filing of the Notice shall provide detailed reasons for filing the Notice of Contest of an order to comply and the specific relief requested. Further, the Notice shall be accompanied by a copy of the order to comply at issue.

(c) The complainant shall provide, within the time frame specified, additional information that is requested by the Chairperson or the Review Commission.

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12:112-3.4 Failure to obey rules

(a) When any party, non-party or representative has failed to proceed as provided by these rules or as required by the Chairperson or the Review Commission, he or she may be declared to be in default either:

1. On the initiative of the Chairperson or the Review Commission, after having been afforded an opportunity to show cause why he or she should not be declared to be in default; or
2. On the motion of a party, non-party or representative.

(b) After a finding of default, the Review Commission, in its discretion, may enter a decision against the defaulting party or non-party or strike any document not filed in accordance with these rules.

(c) For reasons deemed sufficient by the Review Commission and upon motion expeditiously made, the Review Commission may set aside a sanction imposed under (b) above.

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12:112-4.1 Method of review

Within 20 days of receipt of the Notice, the Chairperson of the Review Commission shall determine whether a Notice was timely filed. If so, the Review Commission shall determine whether a review and decision shall be rendered on a written record or whether resolution can only be obtained at a hearing. Normally, a hearing shall be required only where the Review Commission finds that a material and controlling dispute of fact exists.

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12:112-4.2 Written record review

(a) When the Review Commission determines that a matter shall be decided on the written record, it shall provide the parties 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 shall be simultaneously served on all other parties. Evidence of such service shall be provided by the party making the submission.

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

(d) Upon closure of the 20-day period, one additional five working day extension of the comment period may be provided at the request of any one of the parties. Substantial justification shall be required to obtain such extension.

(e) Any party or non-party may review the file at the Division of Public Safety and Occupational Safety and Health, Department of Labor and Workforce Development, during regular business hours.

(f) The Review Commission shall render and notify all parties of its final determination within a reasonable time period.

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12:112-4.3 Burden of proof

The burden of proof in any proceeding before the Review Commission shall rest with the party filing the Notice of Contest.

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12:112-4.4 Stay and interim relief requests

(a) Upon the filing of a Notice, a party, non-party, or representative may petition the Chairperson for a stay or other relief pending final decision of the matter.

(b) A request for stay or interim relief shall be in writing, signed by the petitioner or his or her representative and shall include detailed supporting information for the request.

(c) The following factors shall be considered in reviewing such requests:

1. Clear likelihood of success on the merits by the petitioners;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Likelihood of substantial injury to employees or others if the request was not granted; and
4. The public interest.

(d) The filing of a petition for interim relief shall not stay administrative proceedings or processes.

(e) Each party shall serve copies of all materials submitted on all other parties.

(f) The Chairperson shall submit the request to the Review Commission for decision.

(g) Following a final administrative decision on a Notice by the Review Commission, and upon the filing of an appeal from the decision to the Appellate Division of the Superior Court, a party, non-party, or their representative may petition the Chairperson for a stay or other relief pending a decision by the Court in accordance with the procedures and standards in (b) and (c) above.

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12:112-4.5 Reconsiderations

(a) A party, non-party, or representative may petition the Review Commission for reconsideration of any decision that it renders.

(b) A petition for reconsideration shall be in writing signed by the petitioner, or his or her representative, and shall show the following:

1. The new evidence or additional information not presented at the original proceeding which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

(c) The petitioner shall serve copies of all materials submitted on all other parties in accordance with N.J.A.C. 12:112-1.7.

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12:112-4.6 Settlements

(a) At the request of any party, or on its own motion, the Review Commission may cause an informal conference to be held 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.

(b) Settlement agreements shall be in writing and specify the terms of settlement for each contested issue and specify any issues that remain undecided. Unless the settlement agreement states otherwise, the withdrawal of a Notice of Contest or issue that remains to be decided shall be with prejudice.

(c) A settlement agreement submitted for approval shall be filed with the Chairperson. Proof of service, in the manner prescribed in N.J.A.C. 12:112-1.7, upon all parties shall be filed with the settlement agreement. The parties in a case shall file a final consent order for adoption by the Review Commission.

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12:112-4.7 Adjournment

(a) Adjournments shall be granted only in exceptional situations which could not have been reasonably foreseen or prevented.

(b) All parties requesting an adjournment shall be responsible for giving prompt notice to their witnesses as to the adjournment.

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12:112-4.8 Withdrawals

(a) A party may withdraw its Notice of Contest or order to comply at any stage of a proceeding.

(b) The notice of withdrawal shall be served and posted in accordance with N.J.A.C. 12:112-1.7 upon all parties.

(c) Proof of service shall accompany the notice of withdrawal.

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SUBCHAPTER 5. HEARINGS

12:112-5.1 Hearings

(a) If the Review Commission determines that a review and decision can only be obtained by a hearing, the matter shall be transmitted to the Office of Administrative Law for a hearing before an Administrative Law Judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) The Review Commission shall render a final determination within 45 days of receipt of the Administrative Law Judge's initial decision. The Review Commission may adopt, modify, or reject the Administrative Law Judge's initial decision.

(c) The parties shall have 14 days from the receipt of the Administrative Law Judge's initial decision to file exceptions with the Review Commission.

1. The parties may request an additional seven calendar days to file cross-exceptions.
2. The exceptions and cross-exceptions shall be considered by the Review Commission together with an Administrative Law Judge's initial decision in rendering a final determination.

(d) Copies of all final determinations of the Review Commission shall be mailed to the parties and non-parties within 14 days of the rendering of the final determination.

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12:112-5.2 Abstentions

A member of the Review Commission shall abstain from voting on a particular matter whenever he or she has a personal interest in the outcome of a particular case.

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12:112-5.3 Appeals from Review Commission determinations

Any appeal from a final determination of the Review Commission shall be made to the Appellate Division of the Superior Court.

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SUBCHAPTER 6. REVIEW COMMISSION MEETINGS

12:112-6.1 Meetings

(a) The Chairperson shall convene meetings of the Review Commission, as needed, to render decisions on pending cases.

(b) Such meetings shall be open to the public and held in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-1 et seq.

(c) The Chairperson shall cause notice to be given to parties whose cases may be reviewed at a particular meeting.

(d) Matters for consideration at such meetings shall include, but not be limited to:

1. Cases requiring Review Commission consideration as to whether a written record review of a hearing is appropriate for resolution;
2. Stay and interim relief requests;
3. Final determination on all cases, whether a review is made on the written record or through the hearing process;
4. Petition for reconsideration;
5. Settlements submitted for Review Commission approval;
6. Consolidation of cases;
7. Severance of cases;
8. Non-party participation; and
9. Withdrawal of parties

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12:112-6.2 Quorum

(a) No official business of the Review Commission shall be conducted without a quorum which shall consist of at least two of the three members.

(b) A quorum may be obtained through conference call mechanisms.

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12:112-6.3 Voting

- (a) Members of the Review Commission shall be present in order to vote, except as provided in (b) below.
- (b) A member who is absent with good cause may vote through a conference call mechanism provided he or she certified that he or she has read the Administrative Law Judge's initial decision and any exceptions or cross-exceptions submitted by the parties, in the case of a hearing, or is otherwise familiar with the issue over which the vote was cast.
- (c) Official action of the Review Commission shall be taken only when at least two members vote in a similar manner. In the event that official action cannot be taken, the matter will be continued until at least two member vote in a similar manner.

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SUBCHAPTER 7. RESERVED

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