

**CHAPTER 110**

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

**Authority**

N.J.S.A. 34:6A-25 et seq., specifically 34:6A-32 et seq.

**Source and Effective Date**

R.2003 d.189, effective April 11, 2003.  
See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 110, Occupational Safety and Health Procedural Standards for Public Employees, expires on October 8, 2008. See: 40 N.J.R. 2409(a).

**Chapter Historical Note**

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

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 The text of Chapter 110 was repealed by R.1978 d.288, effective August 16, 1978.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

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

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

Pursuant to Executive Order No. 66(1978), Chapter 110, Occupational Safety and Health Procedural Standards for Public Employees, was readopted as R.1998 d.33, effective December 10, 1997; and Subchapter 8, On-Site Consultation, was adopted as new rules and former Subchapter 8, Standards and Publications Referred to in this Chapter, was redesignated as Subchapter 9, effective January 5, 1998. See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

Chapter 110, Occupational Safety and Health Procedural Standards for Public Employees, was readopted as R.2003 d.189, effective April 11, 2003. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

**12:110-1.1 Purpose**

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

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

**12:110-1.2 Scope**

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

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

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

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

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

**12:110-1.4 Construction**

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

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

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

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

Former N.J.A.C. 12:110-1.4 was recodified to N.J.A.C. 12:110-1.2.

**12:110-1.5 (Reserved)**

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

**12:110-1.6 (Reserved)**

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

**12:110-1.7 Reserved)**

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

SUBCHAPTER 2. DEFINITIONS

**12:110-2.1 Definitions**

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

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

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

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

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

"Compliance Officer" means the person authorized by:

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

"Days" means calendar days unless otherwise specified.

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

“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.

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

Deleted definitions of “Agency”, “Approved”, “Program chief”, “Program director”, “Serve”, “Working days” and “Workplace”; deleted paragraph 3 under “Compliance Officer”; added definitions of

"Days", "Field site", "Other than serious", "Regulatory" and "Willful violation".

## 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.

### 12:110-3.2 Program direction

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

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

### 12:110-3.3 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.

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

### 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.

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

### 12:110-3.5 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'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 insure that any such poster is not altered, defaced, or covered by other material.

(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 Workplace Standards, New Jersey Department of Labor. 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.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
In (c), added last sentence; deleted (c)1; added (e).

## 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.

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

### 12:110-4.2 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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.

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

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

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

Amended by R.2003 d.189, effective May 5, 2003.

See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).

Added (i).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If upon receipt of the notice in (a) above the Commissioner, the Commissioner of Health and Senior Services

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

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.

Recodified from N.J.A.C. 12:110-4.8 and amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
Deleted (d).

#### 12:110-4.8 Inspection not warranted and informal review

(a) If the Commissioner, Commissioner of Health and Senior Services or their designee determines 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 under 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, 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, 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 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 within 30 days of receipt of the request or appeal. The Department of Health and Senior Services shall be consulted when the matter under review involves a determination from the Department of Health and Senior Services.

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 and Senior Services determines that an inspection is not warranted because the requirements of 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 of 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 and Senior Services.

Recodified from N.J.A.C. 12:110-4.9 and amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
Rewrote (a)3; and deleted (d).

#### 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.

Recodified from N.J.A.C. 12:110-4.10 and amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).

#### 12:110-4.10 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 under the Act, he or she shall within 30 days of the completion of inspection processes conducted by the Department of Labor or receipt of a certification of a violation from the Department of Health and Senior Services, 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 and Senior Services 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 and Senior Services, 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.

Recodified from N.J.A.C. 12:110-4.11(a) through (c) and amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
Former N.J.A.C. 12:110-4.10 was recodified to N.J.A.C. 12:110-4.9.

#### 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 under 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 and Senior Services, the Commissioner shall make the determination as to the compromise or settlement of the claim in consultation with the Commissioner of Health and Senior Services.

(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 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 and Senior Services 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 and Senior Services 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 and Senior Services 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.

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

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

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

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

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

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

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

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

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

#### 12:110-4.13 Informal conferences

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

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

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

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

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

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

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

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

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

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

### 12:110-5.1 Scope of subchapter

(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 to 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 contained in 29 CFR § 1904 with the following exceptions:

1. All references to the Secretary of Labor shall be deemed to mean the Commissioner of Labor of the New Jersey Department of Labor;

2. All references to OSHA shall be deemed to mean the New Jersey Department of Labor, 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 C.F.R. § 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 C.F.R. § 1904.1, Partial exemption for employers with 10 or fewer employees does not apply to any New Jersey Public Employer as defined in N.J.S.A. 34:6A-7(c);

6. 29 C.F.R. § 1904.2, Partial exemption for establishments in certain industries, does not apply to any New Jersey Public Employer as defined in N.J.A.C. 12:110-2; and

7. 29 C.F.R. § 1904.39: Reporting fatalities and multiple hospitalization incidents must be reported to the Office of Public Employees Occupational Safety and Health (OPEOSH) via 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.

Amended by R.1998 d.33, effective January 5, 1998.

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

Amended by R.2003 d.189, effective May 5, 2003.

See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).

Designated former paragraph as (a); added (b).

Amended by R.2003 d.397, effective October 6, 2003.

See: 35 N.J.R. 4722(b).

**12:110-5.2 (Reserved)**

Amended by R.1998 d.33, effective January 5, 1998.

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

Repealed by R.2003 d.189, effective May 5, 2003.

See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).

Section was "Log and summary of occupational injuries and illnesses".

**12:110-5.3 (Reserved)**

Repealed by R.2003 d.189, effective May 5, 2003.

See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).

Section was "Period covered".

**12:110-5.4 (Reserved)**

Amended by R.1998 d.33, effective January 5, 1998.

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

Repealed by R.2003 d.189, effective May 5, 2003.

See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).

Section was "Supplementary record".

**12:110-5.5 (Reserved)**

Amended by R.1998 d.33, effective January 5, 1998.

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

Repealed by R.2003 d.189, effective May 5, 2003.

See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).

Section was "Annual summary".

**12:110-5.6 (Reserved)**

Amended by R.1998 d.33, effective January 5, 1998.

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

Repealed by R.2003 d.189, effective May 5, 2003.

See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).

Section was "Retention of records".

**12:110-5.7 (Reserved)**

Amended by R.1998 d.33, effective January 5, 1998.

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

Repealed by R.2003 d.189, effective May 5, 2003.

See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).

Section was "Access to records".

**12:110-5.8 (Reserved)**

Amended by R.1998 d.33, effective January 5, 1998.

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

Repealed by R.2003 d.189, effective May 5, 2003.

See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).

Section was "Reporting of fatality, injury or illness".

**12:110-5.9 (Reserved)**

Repealed by R.2003 d.189, effective May 5, 2003.

See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).

Section was "Falsification, or failure to keep records or reports".

**12:110-5.10 (Reserved)**

Amended by R.1998 d.33, effective January 5, 1998.

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

Repealed by R.2003 d.189, effective May 5, 2003.

See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).

Section was "Change of employer".

**12:110-5.11 (Reserved)**

Amended by R.1998 d.33, effective January 5, 1998.

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

Repealed by R.2003 d.189, effective May 5, 2003.

See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).

Section was "Employees not in fixed establishments".

**12:110-5.12 (Reserved)**

Repealed by R.2003 d.189, effective May 5, 2003.

See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).

Section was "Duties of employers".

**SUBCHAPTER 6. VARIANCES**

**12:110-6.1 Scope of subchapter**

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

**12:110-6.2 Effect of variances**

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

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

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

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

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

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

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

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

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

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

**12:110-6.5 Temporary variance**

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

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

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

1. The name and address of the applicant;
2. The address of the place or places of employment involved;
3. A specification of the standard or portion thereof from which the applicant seeks a temporary variance;
4. A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the applicant is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;
5. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the standard;

6. A statement of when the applicant expects to comply with the standard and the steps taken and to be taken, with specific dates where appropriate, to come into compliance with the standards;

7. A statement of the facts and supporting documents, to establish that:

i. The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

ii. The applicant is taking all available steps to safeguard his employees against the hazards covered by the standard; and

iii. The applicant has an effective program for coming into compliance with the standard as quickly as practicable;

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

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

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

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

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

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

(g) A copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published on the New Jersey Department of Labor website at [www.state.nj.us/labor/](http://www.state.nj.us/labor/) 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.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
Amended by R.2003 d.189, effective May 5, 2003.  
See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).  
Rewrote (g).

**12:110-6.6 Permanent variance**

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

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

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

1. The name and address of the applicant;
2. The address of the place or places of employment involved;
3. A specification of the standard or portion thereof from which the employer seeks a variance.
4. A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;
5. A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide workplaces which are as safe and healthful as those which would prevail if the standard, from which the variance is being sought, were to be complied with;
6. A certification that the applicant has informed his employees of the application by:
  - i. Giving a copy of the explanation to their employee representative where one exists;
  - ii. Posting a statement at the place where notices to employees are normally posted, giving a summary of the application and specifying where a copy may be examined. This notice shall also inform employees of their right to appear and be heard at a hearing on the variance application.

(c) In applications relating to health standards the Commissioner shall consult with the Commissioner of Health and Senior Services 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 website at [www.state.nj.us/labor/](http://www.state.nj.us/labor/) 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.

Amended by R.1998 d.33, effective January 5, 1998.  
See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
Amended by R.2003 d.189, effective May 5, 2003.  
See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).  
Rewrote the section.

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

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

1. The name and address of the applicant;
2. Identification of the order from which relief is sought;
3. A description of the relief which is sought;
4. A statement setting forth with particularity the grounds for relief;
5. If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:
  - i. Giving a copy thereof to their employee representative where one exists;
  - ii. Posting at the place where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself).
6. If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer.

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

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

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

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

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

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

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

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

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

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

1. The terms or an accurate summary of the application;
2. A reference to the Act under which the application has been filed;
3. An invitation to interested persons to submit, within a stated period of time, written data, views, or arguments regarding the application; and
4. Information to affected employers and employees that the matter will be transmitted to the Office of Administrative Law for a hearing.

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

#### 12:110-6.9 Hearing processes

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

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

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

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

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

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

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

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

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

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

Repealed by R.1998 d.33, effective January 5, 1998.

See: 29 N.J.R. 4440(a), 30 N.J.R. 80(a).  
Section was "Hearings".

## SUBCHAPTER 7. DISCRIMINATION AGAINST EMPLOYEES

### 12:110-7.1 Scope of subchapter

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

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

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

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

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

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

**12:110-7.3 Unprotected activities**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) In the absence of any direct evidence of retaliation by the employer for the employee's exercise of protected rights under this Act, a prima facie case must be established by the employee showing that he or she engaged in protected

activity, that the employer knew of this activity, that the employer was hostile to the protected conduct and that the employer took the alleged action in retaliation for the exercise of the protected rights.

(c) When dual motives, both retaliation for the exercise of a protected activity and legitimate business motives are asserted for the employer's action, the employee shall first establish that the protected activity was a substantial factor in the employer's disputed action. If this is accomplished, the burden shifts to the employer to establish by a preponderance of evidence that the action occurred for legitimate business reasons and not in retaliation for the protected activity.

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

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

Section was "Complaints under the Act".

**12:110-7.6 Remedies**

(a) 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.

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

Section was "Proceedings under the Act".  
Amended by R.2003 d.189, effective May 5, 2003.  
See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).  
Rewrote the section.

#### 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.

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

Section was "Testimony".  
Amended by R.2003 d.189, effective May 5, 2003.  
See: 35 N.J.R. 335(a), 35 N.J.R. 1920(a).  
Rewrote the section.

#### 12:110-7.8 Hearing processes

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

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

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

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

Former section was recodified to N.J.A.C. 12:110-7.9.

**12:110-7.9 Refusal to work**

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

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

(c) An employer would not ordinarily be in violation of the Act by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety and health hazards. However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to an imminent danger of serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the imminent danger, and he or she believes that a subsequent discharge, discipline or other employer discrimination activity results from this refusal, he or she may file a discrimination complaint with the Commissioner of Labor in the manner prescribed in this section.

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

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

Recodified from N.J.A.C. 12:110-7.8 and amended by R.1998 d.33, effective January 8, 1998.

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

Former section, "Filing of complaint for discrimination", was repealed.

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

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

(b) Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate

safety rules, shall not be regarded as discriminatory actions prohibited by the Act. This situation shall be distinguished from refusals to work.

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

**SUBCHAPTER 8. ON-SITE CONSULTATION****12:110-8.1 Scope subchapter**

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

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

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

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

**12:110-8.3 Employer obligations**

(a) During a consultation, the employer shall:

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

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

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

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

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

#### 12:110-8.4 Employee participation

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

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

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

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

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

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

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

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

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

1. An opening conference in which the scope of consultation activities and an agreement to abate hazards by mutually agreed upon dates shall be established;

2. An examination of at least those aspects of the employer's safety and health program which relate to the scope of the visit;

3. An inspection and evaluation of the workplace; and

4. A closing conference during which findings shall be reviewed and specific abatement dates established.

(c) An initial visit may include training and education for employees and employers if a need is revealed by the

inspection or the evaluation of the employer's safety and health program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.

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

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

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

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

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

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

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

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