

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.

Source and Effective Date

R.1993 d.71, effective January 8, 1993.
See: 24 N.J.R. 4234(a), 25 N.J.R. 595(a).

Executive Order No. 66(1978) Expiration Date

Chapter 110, Occupational Safety and Health Procedural Standards for Public Employees, expires on January 8, 1998.

Chapter Historical Note

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

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 The text of Chapter 110 was repealed by R.1978 d.288, effective August 16, 1978.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

Chapter 110, Procedural Standards for Public Employees, was adopted pursuant to the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., as R.1988 d.42, effective January 19, 1988. See: 19 N.J.R. 1941(a), 20 N.J.R. 195(a). Pursuant to Executive Order No. 66(1978), Chapter 110 was readopted as R.1993 d.71. See: Source and Effective Date. The chapter was also redesignated Occupational Safety and Health Procedural Standards for Public Employees, effective February 1, 1993. See: 25 N.J.R. 595(a).

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SUBCHAPTER 1. GENERAL PROVISIONS

12:110-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 12:110, Procedural Standards for Public Employees.

12:110-1.2 Authority

These rules are promulgated pursuant to the authority of the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

12:110-1.3 Purpose

The purpose of this chapter is to provide rules to administer basic program elements to achieve a safe and healthy place of employment for the public employee.

12:110-1.4 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.

12:110-1.5 Documents referred to by reference

The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:110-8.

12:110-1.6 Construction

(a) These rules shall be construed to secure a just determination of every issue arising under the Act and the rules promulgated under the Act which shall be as expeditious and inexpensive as possible under the circumstances.

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

(c) Words importing the masculine gender may be applied to the feminine gender.

12:110-1.7 Validity

Should any section, paragraph, sentence or word of this chapter be declared for any reason to be invalid, such decision shall not affect the remaining portions of this chapter.

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.

“Agency” means:

1. An executive department, or any employing unit or authority of the executive branch of the State, or any department, division, bureau, board, council, employer or authority of the State; except any bi-State agency; or

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

“Approved” means acceptable to the Commissioner of Labor, Commissioner of Health or the Commissioner of Community Affairs, as applicable.

“Commissioner” means the Commissioner of the New Jersey Department of Labor or his designee.

“Commissioner of Community Affairs” means the Commissioner of the New Jersey Department of Community Affairs or his designee.

“Commissioner of Health” means the Commissioner of the New Jersey Department of Health or his designee.

“Compliance Officer” means the person authorized by:

1. The Commissioner of Labor to conduct safety inspections, or

2. The Commissioner of Health to conduct health inspections, or

3. The Commissioner of Community Affairs to conduct building, structural or fire safety inspections.

“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.

“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 of any school district or special purposes district created pursuant to law.

“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.

“Establishment” means a single physical location where business is conducted or where services or operations are performed, such as a field activity, regional office, area office, installation, 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 conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm.

“Inspection” means any inspection of an employer’s workplace, establishment, construction site, or other area or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint, any reinspection, follow-up inspection, accident investigation or other inspection conducted under the Act.

“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 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.

“Program Chief” means the officer regularly or temporarily in charge and designated by the Commissioner of Labor or the Commissioner of Health or the Commissioner of Community Affairs to administer the Public Employee Occupational Safety and Health Program for their State Agency in accordance with their statutory obligations under the Act.

“Program Director” means the officer regularly or temporarily in charge designated by the Commissioner of Labor to administer the public employee occupational safety and health program or any other person who is authorized to act for such officer. The latter authorization may include general delegation of the authority of the Program Director for limited purposes.

“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.

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

“Serious” as used in “serious hazard,” “serious violation” or “serious condition” means a hazard, violation or condition such that there is a substantial probability that death or serious physical harm could result.

“Serious injury” means any injury which would require treatment beyond first aid.

“Serve” means forwarding the document by first class mail, return receipt requested, postage prepaid, to the last known address of the employee, employer or employee representative as appropriate.

“Shall” means a mandatory requirement.

“Working days” means Mondays through Fridays but shall not include Saturdays, Sundays, Federal holidays, or State holidays. For the purpose of notice in computing working days, the day of receipt of any notice shall not be included, and the last day of the working days shall be included.

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

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, with the advice of the Commissioner of Health or the Commissioner of Community Affairs, as the case may be, shall be the administrator of this safety and health program set forth in this chapter under the Act.

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 or death to his employees.

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

(c) Every employer, in the absence of existing standards, shall take all prudent measures to comply with the written recommendations made by the Commissioner, the Commissioner of Health or the Commissioner of Community Affairs, as the case may be, to reduce the risk of exposure to unsafe or unhealthy conditions which have been shown to be detrimental to employee health or safety.

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 own actions and conduct.

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

(c) Employees shall use safety equipment, personal protective equipment, and other devices and procedures provided or directed by the agency which have been deemed necessary for their protection.

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

12:110-3.5 Dissemination of program information

(a) Copies of the Act, program elements published in this chapter, details of the agency's occupational safety and health program, and applicable safety and health standards shall be made available by the employer upon request to employees or employee representatives for review.

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

(c) Each agency shall post conspicuously in each establishment, and keep posted, a poster informing employees of the provisions of the Act and the agency occupational safety and health program under this chapter.

1. If the agency needs assistance and advice on the content and development of its poster, such may be requested of the Commissioner prior to printing and distribution.

(d) Agency heads shall promote employee awareness of occupational safety and health matters through their ordinary information channels, such as newsletters, bulletins, handbooks and employee orientations.

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.

12:110-4.2 Posting of notice and availability of Act and rules

(a) Each employer shall post and keep posted a notice or notices, informing employees of the protections and obligations provided for in the Act and that for assistance and information, including copies of the Act and, of specific safety and health standards, employees should contact the employer or the New Jersey Department of Labor.

1. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted.

2. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

(b) Copies of the Act and all rules shall be available at the Office of Division of Workplace Standards of New Jersey Department of Labor. The employer shall obtain copies of these materials and make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed within three working days of the day the request is made.

12:110-4.3 Authority for inspection

(a) The Compliance Officer is authorized to enter without delay and at reasonable times any establishment or workplace of an agency 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 may deem necessary.

(b) The Compliance Officer shall inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein.

(c) The Compliance Officer is authorized to question privately any employer or employee; and to review records required by the Act and this subchapter, and other records which are directly related to the purpose of the inspection.

(d) In the interests of State security prior to inspecting areas containing classified information, the Compliance Officer shall obtain the appropriate security clearance.

12:110-4.4 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;
3. Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and
4. In other circumstances where the Program Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(b) In the situations described in (a) above, advance notice of inspections may be given only if authorized by the Program Chief, except in cases of apparent imminent danger advance notice may be given by the Compliance Officer without such authorization if the Program Director is not immediately available. 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) The employer shall furnish the Compliance Officer with the identity of the authorized representative of employees 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 autho-

rized employee representative, the Compliance Officer shall advise a reasonable number of employees of the inspection.

12:110-4.5 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 Program Chief or the Compliance Officer may direct.

(b) At the beginning of an inspection there shall be an opening conference where the Compliance Officer shall present his credentials to the employer in charge at the establishment; 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. 12:110-4.3 which he wishes to review. However, such designation of records shall not preclude access to additional records specified in N.J.A.C. 12:110-4.3.

(c) 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.

1. In taking photographs and samples, the Compliance Officer shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. A Compliance Officer shall comply with all employer safety and health rules and practices at the establishment being inspected, and he shall wear and use appropriate protective clothing and equipment.

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

(e) 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.

(f) A complaining party and 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 sum-

maries of these conferences shall be provided by the Compliance Officer to all parties affected.

12:110-4.6 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 a representative authorized by his employees shall be given an opportunity to accompany the Compliance Officer during the physical inspection of any workplace for the purpose of aiding such inspection.

1. A Compliance Officer may permit additional employer representatives and additional representatives authorized by employees to accompany him when he determines that an additional representative will further aid in the inspection. Another employer and employee representative may accompany the Compliance Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

(b) For the purpose of this section, a Compliance Officer shall have authority to resolve all disputes as to who is the representative 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 shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(c) The representative authorized by employees shall be a fellow employee or employee representative.

1. If, in the judgment of the Compliance Officer, good cause has been shown why accompaniment by a third party who is not an employee or employee representative, such as an industrial hygienist or a safety engineer, is reasonably necessary to conduct an effective and thorough physical inspection of the workplace, such third party may accompany the Compliance Officer during the inspection.

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

1. With regard to information classified by an agency in the interest of State security, only persons authorized to have access to such information may accompany a Compliance Officer in areas containing such information.

12:110-4.7 Consultation with employees

(a) A Compliance Officer may consult with employees 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, an employee 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 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.

12:110-4.8 Complaints by employees

(a) Any employee or representative of employees who believes that a violation of the Act exists in the workplace where such employee is employed may request an inspection by giving notice of the alleged violation to the Program Chief or to a Compliance Officer.

1. Any such notice shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees.

2. A copy of the notice shall be provided the employer or his agent by the Program Chief or Compliance Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his 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.

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

(c) If upon receipt of the notice in (a) above the Program Chief 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, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violations exists.

1. Inspections under this section shall not be limited to matters referred to in the complaint.

2. Such investigation, when requiring an on-site inspection, shall be initiated within 24 hours for imminent danger situations, within three working days for potentially serious conditions, and within 10 working days for other safety and health risk conditions.

(d) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Compliance Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with (a) above.

12:110-4.9 Inspection not warranted and informal review

(a) If the Program Chief 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. 12:110-4.8, he shall notify the complaining party in writing of such determination.

1. The complaining party may obtain review of such determination by submitting a written statement of position with the Program Director and, at the same time, providing the employer with a copy of such statement by certified mail.

2. The employer may submit an opposing written statement of position with the Commissioner and, at the same time, provide the complaining party with a copy of such statement by certified mail.

3. Upon the request of the complaining party or the employer, the Commissioner at his discretion, may hold an informal conference in which the complaining party and the employer may speak their views.

4. After considering all written and spoken views presented, the Commissioner shall affirm, modify, or reverse the determination of the Program Director and furnish the complaining party and the employer written notification of his decision and the reasons therefor. The decision of the Commissioner shall be final and not subject to further review.

(b) If the Program Chief determines that an inspection is not warranted because the requirements of N.J.A.C. 12:110-4.8(a) have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of new complaint meeting the requirements of N.J.A.C. 12:110-4.8(a).

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

(d) All procedures described in this section involving building, structural or fire safety issues shall be conducted in consultation with the Commissioner of Community Affairs.

12:110-4.10 Imminent danger

(a) Whenever, and as soon as a Compliance Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment 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 shall inform the affected employees and employers of the danger. The Compliance Officer shall also inform the affected employees and employers that he 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.

12:110-4.11 Order to comply and penalties

(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 shall, with reasonable promptness, issue to the employer a written order to comply which shall describe:

1. The nature of the violation, including a reference to the provision of the section, standard, regulation or order alleged to have been violated;
2. The sanction therefore, where appropriate, and;
3. Shall fix a reasonable time for compliance.

(b) Determinations regarding health standards, and written orders issued pursuant thereto, shall be made in consultation with the Commissioner of Health. The Commissioner of Health shall certify to the Commissioner of Labor that a violation exists and the nature of the violation in order for the Commissioner of Labor to issue an order to comply.

(c) Where 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.

(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, within its power and financial resources, the employer shall be liable to a penalty of not more than \$1,000 per day to be collected 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 accordance with the order of the department 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, including a rebate of any such penalty paid up to 90 percent thereof where such person satisfies the Commissioner within one year or such other period as the Commission-

er may deem reasonable that such violation had been eliminated or removed or that such order or injunction 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.

12:110-4.12 Employer contests before the Review Commission

(a) Any employer to whom an order to comply or notice of proposed penalty has been issued may notify the Program Director in writing that he intends to contest such order or proposed penalty before the Review Commission.

(b) Such notice of intention to contest in (a) above shall be postmarked within 15 working days of the receipt by the employer of the order or the notice of proposed penalty.

(c) Every notice of intention to contest shall specify whether it is directed to the order to comply or to the proposed penalty, or both.

(d) The Program Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Review Commission.

12:110-4.13 Failure to correct violation for which an order to comply has been issued

(a) If an inspection discloses that an employer has failed to correct an alleged violation for which an order to comply has been issued within the period permitted for its correction, the Program Director shall, if appropriate, consult with the Attorney General, and he shall notify the employer by certified mail or by personal service from the Compliance Officer of such failure and of the penalty proposed under N.J.S.A. 34:6A-41(d) by reason of such failure.

1. In the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties, the period for the correction of a violation for which an order to comply has been issued shall not begin to run until the entry of a final order of the Review Commission.

(b) Any employer receiving a notification of failure to correct a violation and of proposed penalty may notify the Program Director in writing that he intends to contest such notification before the Review Commission. Such notice of intention to contest shall be postmarked within 15 working days of the receipt by the employer of the notification of failure, and of proposed penalty.

1. The Program Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedures prescribed by the Commission.

(c) Each notification of failure to correct a violation and of proposed penalty shall state that it shall be deemed to be the final order of the Review Commission and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notification, the employer notifies the Program Director in writing that he intends to contest the proposed penalty before the Review Commission.

12:110-4.14 Informal conferences

(a) At the request of an affected employer, employee, or representative of employees, the Commissioner may hold an informal conference for the purpose of discussing any issues raised by an inspection, order to comply, notice of proposed penalty, or notice of intention to contest.

(b) The settlement of any issue at such conference shall be subject to the rules of procedure prescribed by the Review Commission.

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

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

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

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

SUBCHAPTER 5. RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

12:110-5.1 Scope of subchapter

This subchapter establishes procedural rules for recording and reporting occupational injuries and illnesses of public employees.

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

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

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

2. The log and summary shall be completed in the detail provided in the form and instruction on form NJOSH No. 200.

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

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

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

12:110-5.3 Period covered

Records shall be established on a calendar year basis.

12:110-5.4 Supplementary record

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

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

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

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

12:110-5.5 Annual summary

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

1. Calendar year covered;

2. Agency name;

3. Establishment name and address;

4. Signature of certifier and his title, and,

5. The date.

6. If no injuries or illnesses occurred in the year, zeros shall be entered on the totals line.

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

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

(d) Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under N.J.A.C. 12:110-4.2(a). The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1.

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

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

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

12:110-5.6 Retention of records

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

12:110-5.7 Access to records

(a) Each employer shall provide, upon request, records required by N.J.A.C. 12:110-5.2, 5.4 and 5.5, for inspection and copying by any representative of the Commissioner for the purpose of carrying out the provisions of the Act, or by any representative of a State accorded jurisdiction for occu-

ational safety and health inspections or for statistical compilation under N.J.S.A. 34:6A-40.

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

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

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

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

(a) As promptly as possible but not later than the start of the second work day, the employer shall report in writing:

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

(b) Every fatality or serious injury shall be reported, orally and in writing, immediately to the Program Director. The reporting may be by telephone or telegraph.

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

(d) The Program Director may require such additional reports, in writing or otherwise, as he deems necessary, concerning the fatality, injury or illness.

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

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

12:110-5.10 Change of agency

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

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

12:110-5.11 Employees not in fixed establishments

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

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

12:110-5.12 Duties of employers

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

SUBCHAPTER 6. VARIANCES

12:110-6.1 Scope of subchapter

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

12:110-6.2 Effect of variances

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

12:110-6.3 Public notice of a granted variance

Every final action granting a variance shall be published. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

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, 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.

12:110-6.5 Temporary variance

(a) Pursuant to N.J.S.A. 34:6A-3.9, any employer, or class of employers, may request a temporary variance from a standard, or portion thereof, and may file a written application containing the information specified in (b) below with the:

Commissioner of Labor
New Jersey Department of Labor
CN 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 citation 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 intends to take, with specific dates where appropriate, to come into compliance with the standards;

7. A statement of the facts the applicant would list 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 request for a hearing;

9. A statement that the applicant has informed his affected employees of the application by giving a copy thereof to their authorized 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

10. A description of how affected employees have been informed of the application and of their right to petition the Commissioner for a hearing.

(c) The Commissioner may issue an interim order granting relief pending the hearing.

(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. 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.

12:110-6.6 Permanent variance

(a) Pursuant to N.J.S.A. 34:6A-39, any employer, or class 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
CN 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 description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;

4. A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought;

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

i. Giving a copy of the explanation to their authorized representative;

ii. Posting a 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 (or in lieu of such summary, the posting of the application itself); and

iii. By other appropriate means;

6. Any request for a hearing; and

7. A description of how employees have been informed of the application and of their right to petition the Commissioner for a hearing.

(c) The Commissioner may issue an interim order granting relief pending the hearing.

(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. 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.

12:110-6.7 Modification, revocation and renewal of orders

(a) An affected employer or an affected employee may apply in writing to the Commissioner for a modification or revocation of an order issued under N.J.S.A. 34:6A-39. The application shall contain:

1. The name and address of the applicant;

2. A description of the relief which is sought;

3. A statement setting forth with particularity the grounds for relief;

4. 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 authorized representative;

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); and

iii. Other appropriate means.

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

6. Any request for a hearing.

(b) The Commissioner may, on his own motion, proceed to modify or revoke an order issued under N.J.S.A. 34:6A-39. In such event, the Commissioner shall cause to be published a notice of his 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. Any 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.

(d) Any final order issued under N.J.S.A. 34:6A-39 may be modified or revoked upon application by an employer, any employee, or by the Commissioner on his own motion, at any time after six months from its issuance.

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 covered in the application of any right to request a hearing on the application.

12:110-6.9 Requests for hearing on application

(a) Within the time allowed by a notice of the filing of an application, any affected employer or employee, may file with the Commissioner, an original and four copies, a request for a hearing on the application.

(b) A request for a hearing filed pursuant to (a) above shall include:

1. A concise statement of facts showing how the employer or employee would be affected by the relief sought;
2. A specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and
3. Any views or arguments on any issue of fact or law presented.

12:110-6.10 Consolidation of proceedings

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

12:110-6.11 Hearings

Hearings for an order to grant a variance shall be pursuant to N.J.S.A. 34:6A-39; N.J.S.A. 52:14B-1 et seq., Administrative Procedure Act; N.J.S.A. 52:14F-1 et seq., and N.J.A.C. 1:1-1 et seq.

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 shall discharge or in any manner discriminate against any employee because the employee has:

1. Filed any complaint under or related to the Act;
2. Instituted or caused to be instituted any proceeding under or related to the Act;
3. Testified or is about to testify in any proceeding under or related to the Act; or
4. Exercised on his own behalf or on behalf of others any right afforded by the Act.

(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, bring an action in the Superior Court against the person alleged to have violated the provisions of this section. In any such action, the Superior Court shall have jurisdiction, for cause shown, to restrain violations of this section and order all appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay.

12:110-7.3 Persons prohibited from discriminating

(a) No person shall discharge or in any manner discriminate against any employee because the employee has exercised rights under the Act or these rules.

(b) The prohibitions of the Act are not limited to actions taken by employers against their own employees.

(c) A person may be chargeable with an act of discrimination against an employee of another person. The Act extends to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee.

12:110-7.4 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 disciplines 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 a 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 was because of protected activity shall be determined on the basis of the facts in the particular case.

12:110-7.5 Complaints under the Act

(a) Discharge of, or discrimination against, an employee because the employee has filed a complaint under or related to the Act is prohibited by the Act.

1. For example, such complaint includes, but is not limited to, an employee request for inspection.

(b) Complaints made to State or local agencies regarding occupational safety and health conditions shall relate to the Act. Such complaints shall relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

(c) Complaints about occupational safety and health matters made to employers, if made in good faith, shall relate to the Act, and an employee shall be protected against discharge or discrimination caused by a complaint to the employer.

12:110-7.6 Proceedings under the Act

(a) Discharge of, or discrimination against, any employee because the employee has instituted or caused to be instituted any proceeding under or related to the Act is prohibited by the Act.

1. Examples of proceedings which could arise specifically under the Act include inspections of worksites, employee initiation of proceedings for promulgation of an occupational safety and health standard, employee application for modification or revocation of a variance, and employee judicial challenge to a standard.

(b) An employee need not directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

12:110-7.7 Testimony

(a) Discharge of, or discrimination against, any employee because the employee has testified or is about to testify in proceedings under or related to the Act is prohibited by the Act.

(b) The protection in (a) above is not limited to testimony in proceedings instituted or caused to be instituted by the employee, but extends to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rule making or adjudicative functions.

(c) If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he shall be protected against discrimination resulting from such testimony.

12:110-7.8 Exercise of any right afforded by the Act

(a) In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to the Act, the Act shall protect employees from discrimination occurring because of the exercise of any right afforded by the Act.

1. Certain rights are explicitly provided in the Act.

i. For example, there is a right to participate as a party in enforcement proceedings.

2. Certain other rights exist by necessary implication.

i. For example, employees may request information from the Public Employee Occupation Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act.

ii. Employees interviewed by designees of the Commissioner in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

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

1. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally 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.

2. 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.

3. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to 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 dangerous condition, he would be protected against subsequent discrimination.

i. 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 is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels.

ii. The employee, where possible, shall also have sought from his employer, and been unable to obtain a correction of the dangerous condition.

12:110-7.9 Filing of complaint for discrimination

The filing of a complaint for discrimination shall be in accordance with N.J.S.A. 34:6A-45.

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 ordinarily be regarded as discriminatory action prohibited by the Act. This situation shall be distinguished from refusals to work.

**SUBCHAPTER 8. STANDARDS AND
PUBLICATIONS REFERRED TO IN THIS
CHAPTER**

12:110-8.1 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.

12:110-8.2 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 normal working days:

New Jersey Department of Labor
Division of Workplace Standards
Station Plaza—Bldg. 4
East State Street and South Clinton Avenue
Trenton, New Jersey

12:110-8.3 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. 12:110-8.1

N.J.S.A. New Jersey Statutes Annotated

Copies available from:
Division of Workplace Standards
New Jersey Department of Labor
CN 386
Trenton, New Jersey 08625-0386