

## BUDGET POLICY AND REPORTING MANUAL

<i>date</i> 4/1/87	<i>subject</i> <b>Implementation of Public Employee Safety and Health Act for State Occupied Workplaces</b>	<i>item</i> B-600
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### I. Purpose and Scope:

This Item provides guidelines and procedures to ensure that State agencies, the State Department of labor (DOL), State building construction agencies (such as the Office of General Services, the State University Construction Fund, the Facilities Development Corporation, and the Dormitory Authority), the Division of the Budget, and the Governor's Office of Employee Relations, work cooperatively in implementing the provisions of the New York State Public Employees Safety and Health Act (PESHA) as they relate to workplaces of State employees.

Since enactment of PESHA, the DOL Division of Safety and Health has conducted numerous inspections of workplaces of State and local employees. (This Item only addresses State employee workplaces.) These inspections have identified violations of safety and health standards, leading to the issuance of citations to employers for necessary corrective actions.

It is the intent of this Item to clarify the roles and responsibilities of the various parties, so that each party involved receives timely notice of orders for corrective actions which should be taken in an expeditious manner to afford State employees safe workplaces.

### II. General Policy:

It is the policy of the State of New York as a public employer to provide a work environment free from recognized hazards that can, or are likely to, cause death or injury, and which will provide reasonable and adequate protection to the lives, safety and health of its employees.

Any violations of such standards will be corrected by the State as soon as is reasonably practical to ensure the continuance of such protection.

### III. Background and Statutory Reference:

The United States Occupational Safety and Health Act of 1970 (P.L. 91-596) established standards and procedures to protect the health and safety of those working in the private sector.

In 1980, the Governor and the Legislature recognized that it was inappropriate to continue two standards for employee safety, one applicable to those who work in the private sector and one for those who are employed by the State or local governments. Accordingly, the New York State Labor Law was amended (Chapter 729, Laws of 1980) by adding a new section 27-a, which deals with occupational safety and health in the public sector.

The new law, and rules and regulations adopted pursuant to it, charged the State Commissioner of Labor with, among other things, the responsibility to conduct inspections of

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State agency workplaces according to the schedule of priorities listed below in descending order of priority:

- A. Imminent danger
- B. Fatalities/catastrophe investigations
- C. Complaint investigations
- D. Follow-up investigations to employers with outstanding serious violations
- E. Programmed inspections

Following such inspections, an order to comply may be issued whenever a "State agency employer" has violated the law, a standard or a rule or regulation of the program. The order will cite the provision being violated, describe the nature of the violation and specify a reasonable time for compliance (i.e., to perform corrective work or remedy the situation).

There are also provisions for variances, both temporary and permanent, appeals, and hearings on the orders (agencies and examiners should follow 12NYCRR Part 800 et seq.). Finally, the law provides for judicial enforcement, under Article 78 of the Civil Practice Law and Rules, of compliance with orders of the Commissioner of Labor pursuant to the Act.

#### IV. **Definition:**

Definitions as used in the Item are as follows:

- A. "State agency employer" means any State department, agency, board, commission, public authority or public benefit corporation.
- B. "Public employee" means any employee of a State agency employer, as defined above.
- C. "Public authority or public benefit corporation" means any such entity whose board members, or a majority of which, are appointed by the Governor and whose operating budget is included in the State's Executive Budget process.
- D. "Public Employee Occupational Safety and Health Standards" means those standards promulgated under the United States Occupational Safety and Health Act of 1970 (OSHA) as adopted and updated regularly by the State Commissioner of Labor (12 NYCRR Part 800).
- E. "Construction agency" means an agency that provides building design and construction management services to State agency employers. In the case of the State University (SUNY) it is the State University Construction Fund; for the offices of the Department of Mental Hygiene (DMH), it is the Facilities Development Corporation;

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for SUNY's dormitories and City University of New York's buildings it is the Dormitory Authority; and, for all other State agency employers, including SUNY and DMH in some circumstances, it is the Office of General Services (OGS).

### V. Procedures and Agency Responsibilities:

#### A. Inspections

The State Commissioner of Labor will conduct inspections of State agency employer workplaces pursuant to rules and regulations adopted therefor (12 NYCRR Part 802).

#### B. Violations and Orders

Whenever the Commissioner of Labor has identified a violation of the law, a standard, or a rule or regulation, an order will be issued to the chief executive officer of the State agency employer or his designated representative. The Department of Labor will also send a copy of the order to the Division of the Budget and to the Governor's Office of Employee Relations. For leased premises a copy of the order should also be forwarded to OGS, or FDC, if applicable. The order will cite the provision violated, describe the nature of the violation and specify an reasonable time for compliance.

(In the case of institutional agencies, facilities should develop an internal procedure to inform their central office, health and safety coordinator, or any orders received by them.)

#### C. Corrective Action and Compliance

##### 1. State-Owned Space.

In space that is owned by the State, the State agency employer should expeditiously determine whether the level of response as defined below, is appropriate. If so, corrective action consistent with the order and timetable for compliance should be taken. (If there is disagreement, the appeals process under the PESHA procedures should be followed.)

- a. Emergency Action. If the identified violation can cause imminent danger to employees, it should be corrected as soon as possible according to (1) and (2) below. If imminent danger cannot be immediately corrected, employees must be taken out of risk.

- (1) Operation and Maintenance Response - If corrective action can be taken through a routine maintenance activity, it should be done by the State agency employer.

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(2) Capital Project Response - If the corrective action requires funding from the capital projects budget, the State agency employer should expeditiously notify its construction agency and request that its budget examiner: (a) authorize its construction agency to begin design of the corrective action; and, (b) allocate funds for the corrective action from, but not limited to, the following sources of funds:

- S the State agency employer's rehabilitation and improvement budget;
- S an existing line item capital appropriation;
- S transfer or interchange within the agency employer's capital budget;
- S a special emergency appropriation pursuant to section 53 of the State Finance Law.

If OGS is the construction agency, it should proceed in accordance with section 9 of the Public Buildings Law regarding construction emergencies. If SUCF is the construction agency, it should proceed according with Article 8-A of the Education Law. If FDC is the construction agency, it should proceed according to section 4409(2)(h) of the Unconsolidated Laws. Any use of appropriations for the operating budgets of the State University (State operated campuses) or City University (senior colleges and programs) should be in accordance with Chapters 553-555 of the Laws of 1985. As soon as design of the corrective action has been commenced, the State agency employer should notify the Commissioner of Labor of the estimated time for corrective action to be completed.

- b. Routine Maintenance Action. If corrective action can be taken through a routine maintenance activity, it should be done by the State agency employer within the time prescribed for compliance.
- c. Major Capital Project Action. If the corrective action for the identified violation is not a routine maintenance nor an emergency and a capital project is required to correct the situation, the State agency employer should notify its construction agency by copy of the order.

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If the budget examiner determines that funds are currently available to take the necessary corrective action, the State agency employer should request an allocation of funds and that its construction agency by authorized to commence design of the project.

If funds are not available, the State agency employer will be advised by the budget examiner to request funds for the project in its next Executive Budget request. The Department of Labor, Division of Safety and Health should be advised by the State agency employer of the time necessary to secure an appropriation and to fully comply with the order. The State agency employer should seek whatever variance is necessary (12 NYCRR Part 803) and take temporary steps to protect employee health and safety until permanent corrective action has been taken.

### 2. State Leased Space.

In space leased or rented by the State, the property management officer of the State agency employer should immediately notify its leasing agent, if applicable (e.g., Office of General Services, Division of Space Procurement and Allocation; Facilities Development Corporation). The leasing agent should determine from the terms of the lease whether the owner of the property or the State agency employer is responsible for taking corrective action. If the owner is responsible, the leasing agent should notify the owner to take corrective action. If the agency employer is responsible, it should proceed as with State-owned space (see above).

### D. Notification Upon Completion of Corrective Actions.

Upon completion of the corrective action, the State agency employer should notify its budget examiner, the Governor's Office of Employee Relations and the Department of Labor's Division of Safety and Health which should keep a record of the current status of all such orders.

### E. Labor and Management Communications.

In the interest of harmonious labor relations, it is desirable that discussions with management and union representatives occur at appropriate times and levels as correction action progresses.