

Occupational Safety and Health Admin., Labor

§ 1956.50

standards identical to all basic Federal standards in 29 CFR parts 1910, 1926, and 1928. The State has continued to adopt Federal standards, amendments and corrections as noted in separate standards approval notices.

(d) In accordance with 29 CFR 1956.43(c), Connecticut promulgated rules for inspections, citations, and proposed penalties (Administrative Regulation Section 31-371-1 through 20) parallel to 29 CFR part 1903; recording and reporting occupational injuries and illness (Administrative Regulation Section 31-374-1 through 15 parallel to 29 CFR part 1904; rules of practices for variances (Administrative Regulation Section 31-372-1 through 51) parallel to 29 CFR part 1905; and review commission procedures (Administrative Regulation Section 31-376-1 through 61) parallel to 29 CFR part 2200. In addition, Connecticut adopted Field Operations and Industrial Hygiene Manuals identical to the Federal. These supplements were approved by the Assistant Secretary on August 3, 1983.

(e) In accordance with 29 CFR 1956.43(d), Connecticut's employee discrimination provisions (Administrative Regulation Section 31-379-1 through 22) were approved by the Assistant Secretary on August 3, 1983.

(f) In accordance with 29 CFR 1956.43(e), Connecticut's comprehensive list classifying governmental entities covered by the plan was approved by the Assistant Secretary on August 3, 1983.

(g) In accordance with 29 CFR 1956.10(g), a State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. The Connecticut Public Employee Only State plan provides for three (3) safety compliance officers and one (1) health compliance officer as set forth in the Connecticut Fiscal Year 1986 grant. This staffing level meets the "fully effective" benchmarks established for Connecticut for both safety and health.

(h) In accordance with § 1956.23 of this chapter, the Connecticut occupational safety and health public employee only plan was certified effective August 19, 1986 as having completed all developmental steps specified in the plan as

approved October 2, 1978, on or before October 2, 1979. This certification attests to the structured completeness of the plan, but does not render judgment on adequacy of performance.

[48 FR 37027, Aug. 16, 1983, as amended at 51 FR 32454, Sept. 12, 1986]

Subpart F—New York

AUTHORITY: Secs. 8(g), 18, 84 Stat. 1600, 1608 (29 U.S.C. 657(g), 667); 29 CFR part 1956, Secretary of Labor's Order 9-83 (48 FR 35736).

SOURCE: 49 FR 23000, June 1, 1984, unless otherwise noted.

§ 1956.50 Description of the plan as certified.

(a) *Authority and scope.* The New York State Plan for Public Employee Occupational Safety and Health received initial OSHA approval on June 1, 1984, and was certified as having successfully completed its developmental steps on August 16, 2006. The plan designates the New York Department of Labor as the State agency responsible for administering the plan throughout the State. The plan includes legislation, the New York Act (Public Employee Safety and Health Act, Chapter 729 of the Laws of 1980/Article 2, Section 27-a of the New York State Labor Law), enacted in 1980, and amended on April 17, 1984; August 2, 1985; May 25 and July 22, 1990; April 10, 1992; June 28, 1993; and April 1, 1997. Under this legislation, the Commissioner of Labor has full authority to enforce and administer all laws and rules protecting the safety and health of all employees of the State and its political subdivisions. In response to OSHA's concern that language in section 27-a.2 of the New York Act, regarding the Commissioner of Education's authority with respect to school buildings, raised questions about the coverage under the plan of public school employees, in 1984 New York submitted amendments to its plan consisting of Counsel's opinion and an assurance that public school employees are fully covered under the terms of the PESH Act.

(b) *Standards.* The New York plan, as of revisions dated April 28, 2006, provides for the adoption of all Federal OSHA standards promulgated as of

that date, and for the incorporation of any subsequent revisions or additions thereto in a timely manner, including in response to Federal OSHA emergency temporary standards. The procedure for adoption of Federal OSHA standards calls for publication of the Commissioner of Labor's intent to adopt a standard in the New York State Register 45 days prior to such adoption. Subsequent to adoption and upon filing of the standard with the Secretary of State, a notice of final action will be published as soon as is practicable in the *State Register*. The plan also provides for the adoption of alternative or different occupational safety and health standards if a determination is made by the State that an issue is not properly addressed by OSHA standards and is relevant to the safety and health of public employees. In such cases, the Commissioner of Labor will develop an alternative standard to protect the safety and health of public employees in consultation with the Hazard Abatement Board, or on his/her own initiative. The procedures for adoption of alternative standards contain criteria for consideration of expert technical advice and allow interested persons to request development of any standard and to participate in any hearing for the development or modification of standards.

(c) *Variances*. The plan includes provisions for the granting of permanent and temporary variances from State standards in terms substantially similar to the variance provisions contained in the Federal program. The State provisions require employee notification of variance applications and provide for employee participation in hearings held on variance applications. Variances may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance, and variances may have only future effect.

(d) *Employee notice and discrimination protection*. The plan provides for notification to employees of their protections and obligations under the plan by such means as a State poster and required posting of notices of violations. The plan also provides for protection of employees against discharge or discrimination resulting from exercise of

their rights under the State's Act in terms essentially identical to section 11(c) of the OSH Act.

(e) *Inspections and enforcement*. The plan provides for inspection of covered workplaces, including inspections in response to employee complaints. If a determination is made that an employee complaint does not warrant an inspection, the complainant shall be notified, in writing, of such determination and afforded an opportunity to seek informal review of the determination. The plan provides the opportunity for employer and employee representatives to accompany the inspector during an inspection for the purpose of aiding in the inspection. The plan also provides for right of entry for inspection and a prohibition of advance notice of inspection. In lieu of first-instance monetary sanctions for violations, the plan establishes a system for compelling compliance under which public employers are issued notices of violation and orders to comply. Such notices fix a reasonable period of time for compliance. If compliance is not achieved by the time of a follow-up inspection, daily failure-to-abate penalties of up to \$50 for non-serious violations and up to \$200 for serious violations, will be proposed. The Commissioner of Labor may seek judicial enforcement of orders to comply by commencing a proceeding pursuant to Article 78 of the New York Civil Practice Law. In addition, the plan provides for expedited judicial enforcement when non-compliance is limited to non-payment of penalties.

(f) *Review procedures*. Under the plan, public employers and employees may seek formal administrative review of New York Department of Labor citations, including penalties and the reasonableness of the abatement periods, by petitioning the New York Industrial Board of Appeals (IBA) no later than 60 days after the issuance of the citation. The IBA is the independent State agency authorized by section 27-a(6)(c) of the New York Act to consider petitions from affected parties for review of the Commissioner of Labor's determinations. A contest does not automatically stay a notice of violation, penalty or abatement date; a stay must be granted from the IBA. Judicial review

of any decision of the IBA may be sought pursuant to Article 78 of the New York Civil Practice Law. Prior to contest, employers, employees and other affected parties may seek informal review of citations, penalties and abatement dates by the Department of Labor by requesting an informal conference in writing within 20 working days from the receipt of citation. If the informal conference does not produce agreement, the affected party may seek formal administrative review with the IBA. Public employees or their authorized representatives have the additional right under 12 NYCRR Part 805 to contest the abatement period by filing a petition with the Commissioner within 15 working days of the posting of the citation by filing a petition with the Department of Labor, or later if good cause for late filing is shown. If the Commissioner denies the employee contest of abatement period under Part 805 in whole or in part, the complaint will automatically be forwarded to the IBA for review. Under the IBA rules, public employees or their representatives may request permission to participate in an employer-initiated review process as "intervenors." The plan includes an April 28, 2006, assurance that should an employee or employee representative request intervenor status in an employer-initiated case, the State will appropriately inform the IBA of its support for the request. Should an employee's or employee representative's request for participation be denied, the State will seek immediate corrective action to guarantee the right to employee party status in employer-initiated cases. The period fixed in the plan for contesting notices of violation is 60 calendar days, which is significantly longer than the 15 working day period allowed under the Federal OSHA program. However, New York has provided assurance, by Counsel's opinion of March 3, 1984, that it has the authority under Article 78 of the New York Civil Practice Law to obtain judicial enforcement of an uncontested order to comply upon expiration of the abatement period, regardless of whether the 60 day contest period has expired. New York has also assured that should the State Labor Department's interpretation be success-

fully challenged, appropriate legislative correction would be sought.

(g) *Staffing and resources.* The plan as revised April 28, 2006, provides assurances of a fully trained, adequate staff, including 29 safety and 21 health compliance officers for enforcement inspections and 11 safety and 9 health consultants to perform consultation services in the public sector. The State has also given satisfactory assurances of continued adequate funding to support the plan.

(h) *Records and reports.* The plan provides that public employers in New York will maintain appropriate records and make timely reports on occupational injuries and illnesses in a manner substantially identical to that required for private sector employers under Federal OSHA. New York has assured that it will continue its participation in the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses in the public sector. The plan also contains assurances that the Commissioner of Labor will provide reports to OSHA in such form as the Assistant Secretary may require, and that New York will participate in OSHA's Integrated Management Information System.

(i) *Voluntary compliance programs.* The plan provides for training for public employers and employees; seminars to familiarize affected public employers and employees with applicable standards, requirements and safe work practices; and an on-site consultation program in the public sector to provide services to public employers upon request.

[71 FR 47087, Aug. 16, 2006]

§ 1956.51 Developmental schedule.

The New York plan is developmental. The following is a schedule of major developmental steps as provided in the plan:

(a) Adopt all OSHA standards promulgated as of July 1, 1983 (within three months after plan approval).

(b) Promulgate regulations for inspections, citations and abatement, equivalent to 29 CFR part 1903 (within three years after plan approval).

(c) Submit State poster (within six months after plan approval).