

54 N.J.R. 1774(a)

VOLUME 54, ISSUE 18, SEPTEMBER 19, 2022

RULE PROPOSALS

Reporter

54 N.J.R. 1774(a)

NJ - New Jersey Register > 2022 > SEPTEMBER > SEPTEMBER 19, 2022 > RULE PROPOSALS > LABOR AND WORKFORCE DEVELOPMENT -- PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH

Interested Persons Statement

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

Agency

LABOR AND WORKFORCE DEVELOPMENT > PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH

Administrative Code Citation

Proposed Readoption with Amendments: N.J.A.C. 12:110

Text

Occupational Safety and Health Procedural Standards for Public Employees

Authorized By: Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

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

Calendar Reference: See Summary below for explanation of exception to the calendar requirement.

Proposal Number: PRN 2022-120.

Submit written comments by November 18, 2022, to:

David Fish, Executive Director
Office of Legal and Regulatory Services
NJ Department of Labor and Workforce Development
PO Box 110-13th Floor
Trenton, New Jersey 08625-0110

Email: david.fish@dol.nj.gov

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 12:110, Occupational safety and health procedural standards for public employees, was scheduled to expire on August 8, 2022. As the Department of Labor and Workforce Development (Department) filed this notice of proposed readoption with amendments with the Office of Administrative Law prior to that date, the expiration date was extended 180 days to February 4, 2023, pursuant to N.J.S.A. 52:14B-5.1.c(2). The chapter was promulgated in order to implement N.J.S.A. 34:6A-25 et seq., the New Jersey Public Employee's Occupational Safety and Health Act (the Act), which establishes standards for the safety and health of public employees in the workplace. Specifically, N.J.A.C. 12:110 contains procedures and standards for inspections by the Department of public employee workplaces, issuance by the Department of orders to comply, the recording and reporting of occupational injuries and illnesses in public employee workplaces, and the application for and granting of variances from standards set forth within the Act. The Department has reviewed N.J.A.C. 12:110, and with the exception of technical amendments made throughout the chapter to change the name of the Department of Health and Senior Services and the Commissioner of Health and Senior Services to the Department of Health and Commissioner of Health, respectively, in order to reflect an organizational restructuring within State government; permit the posting and distribution of notices/posters by employers through electronic means; gender references, recognize and be inclusive of non-binary gender identity; remove a single requirement that an application for variance submitted by employers be "typewritten"; and correct several statutory and regulatory cross-references, one spelling error, and one typographical error, has determined the rules to be necessary, reasonable, and proper for the purposes for which they were originally promulgated. Accordingly, the Department proposes that N.J.A.C. 12:110 be readopted with amendments.

A summary of the subchapters at N.J.A.C. 12:110 follows:

N.J.A.C. 12:110-1 sets forth the general provisions of the chapter, including the purpose, scope, documents referred to by reference, and a section pertaining to the chapter's construction.

N.J.A.C. 12:110-2 contains definitions of words and terms used throughout the chapter.

N.J.A.C. 12:110-3 sets forth the responsibilities and rights for the procedures developed for the safety and health program pursuant to the Act.

N.J.A.C. 12:110-4 contains procedural rules regarding inspection, orders to comply, and penalties.

N.J.A.C. 12:110-5 contains procedural rules pertaining to recording and reporting occupational injuries and illnesses of public employees.

N.J.A.C. 12:110-6 establishes rules of practice for administrative proceedings to grant variances pursuant to N.J.S.A. 34:6A-39.

N.J.A.C. 12:110-7 establishes procedural rules governing a public employee's allegations of discrimination by a public employer; that is, discrimination for having filed a complaint pursuant to the Act, requested an inspection, instituted, or caused to be instituted, any proceeding pursuant to, or related to, the Act, testified, or are about to testify, in any proceeding pursuant to, or related to, the Act, made or provided any statement related to safety or health conditions at the workplace, participated as a party in enforcement proceedings pursuant to the Act, requested information or advice from the Department of Labor and Workforce Development or the Department of Health and Senior Services, or exercised, on his or her own behalf, or on the behalf of others, any right afforded by the Act.

N.J.A.C. 12:110-8 sets forth the requirements for the establishment of a consultation program for public employers.

N.J.A.C. 12:110-9 lists the standards and publications referred to in the chapter.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments directly impact all public employers and employees within the State of New Jersey, by ensuring that public employees are guaranteed the same level of protection from the recognized occupational safety and health hazards as afforded to all New Jersey private sector employees.

Economic Impact

Pursuant to the rules proposed for readoption with amendments, public employers will, as they have in the past, be required to provide their employees with a place of employment free from recognized hazards. Therefore, inspections, repairs, and maintenance, as well as recordkeeping and reporting, must continue to occur and public employers will continue to incur costs associated with meeting those obligations. This, however, is necessary in order to meet the statutory requirements pursuant to the Act and is all part of the ongoing effort to ensure that public employees are able to work free of recognized safety and health hazards, in accordance with adopted safety and health standards.

Federal Standards Statement

The rules proposed for readoption with amendments do not contain any standards or requirements that exceed standards or requirements imposed by Federal law. Rather, the rules proposed for readoption with amendments are, pursuant to N.J.S.A. 34:6A-30, consistent with Federal Occupational Safety and Health Act (OSHA) standards (see 29 U.S.C. §§ 651 et seq.).

Jobs Impact

The Department does not anticipate any job creation or loss of jobs as a result of the rules proposed for readoption with amendments.

Agriculture Industry Impact

The Department does not anticipate any impact on the agriculture industry as a result of the rules proposed for readoption with amendments.

[page=1775]

Regulatory Flexibility Statement

The rules proposed for readoption with amendments do not impose any reporting, recordkeeping, or compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as the rules proposed for readoption with amendments apply exclusively to public employers and public employees.

Housing Affordability Impact Analysis

It is not anticipated that the rules proposed for readoption with amendments would evoke a change in the average costs associated with housing, nor will they have any effect on the affordability of housing. The basis for this finding is that the rules proposed for readoption with amendments pertain to occupational safety and health standards for public employees and have nothing to do with housing.

Smart Growth Development Impact Analysis

It is not anticipated that the rules proposed for readoption with amendments would evoke a change in housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for readoption with amendments pertain to occupational safety and health standards for public employees and do not pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere else in the State of New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commissioner of the Department has evaluated this rulemaking and determined that it would not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:110.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

12:110-1.4 Construction

(a)-(b) (No change.)

[(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.]

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

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.

...

"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] **officer**" means the person authorized by:

1. (No change.)
2. The Commissioner of Health [and Senior Services] to conduct health inspections.

...

SUBCHAPTER 3. ADMINISTRATION

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.

12:110-3.5 Dissemination of program information

(a)-(b) (No change.)

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

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

(d)-(e) (No change.)

SUBCHAPTER 4. INSPECTIONS, ORDERS TO COMPLY, AND PENALTIES

12:110-4.3 Advance notice of inspection

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

1.-2. (No change.)

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) (No change.)

(c) Any person who gives advance notice of any inspection to be conducted [under this] **pursuant to the 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.

12:110-4.4 Conduct of inspections

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

(b)-(i) (No change.)

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. (No change.)

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

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

(c) If, upon receipt of the notice [in] **at** (a) above, the Commissioner, the Commissioner of Health [and Senior Services], or their designees, determines that the complaint meets the requirements set forth [in] **at** (a) above, and that there are reasonable grounds to believe that the alleged violation exists, an inspection shall be made as soon as practicable, to determine if such alleged violations exist.

1.-2. (No change.)

12:110-4.8 Inspection not warranted and informal review

(a) If the Commissioner, Commissioner of Health [and Senior Services], or their designees, determine that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint [under] **pursuant to** N.J.A.C. [page=1776] 12:110-4.7, the complaining party shall be notified, in writing, of such determination.

1.-2. (No change.)

3. The complaining party or the employer may request an informal conference to attempt to resolve the dispute. If a party requests an informal conference or the Department of Labor and Workforce Development determines that an informal conference would be useful and not violative of a request for anonymity, an informal conference shall be scheduled and conducted by the Department of Labor and Workforce Development within 30 days of receipt of the request or appeal. The Department of Health [and Senior Services] shall be consulted when the matter under review involves a determination from the Department of Health [and Senior Services].

4. (No change.)

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

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

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] **pursuant to** the Act, he or she shall, within 30 days of the completion of inspection processes conducted by the Department of Labor and Workforce Development or receipt of a certification of a violation from the Department of Health [and Senior Services], issue to the employer a written Order to Comply, which shall describe:

1.-2. (No change.)

(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) (No change.)

12:110-4.11 Penalties

(a)-(b) (No change.)

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

1. In any claim involving investigations conducted by the Department of Health [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) (No change.)

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

1.-4. (No change.)

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. (No change.)

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.-4. (No change.)

SUBCHAPTER 5. RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

12:110-5.1 Scope of subchapter

(a) (No change.)

(b) New Jersey adopted 29 CFR 1904 by reference at N.J.A.C. 12:100-4.2, in the New Jersey Register on September 4, 2001 (33 N.J.R. 2994(a)). All requirements for the recording and reporting of work-related deaths, injuries, and illnesses are [contained in] **at** 29 CFR 1904 with the following exceptions:

1.-3. (No change.)

4. 29 [C.F.R. §] **CFR** 1904 Subpart B-Scope: New Jersey requires all public employers to record and report work-related deaths, injuries, or illnesses as contained in this chapter;

5. 29 [C.F.R. §] **CFR** 1904.1, Partial exemption for employers with 10 or fewer employees does not apply to any [New Jersey Public Employer] **employer** as defined [in N.J.S.A. 34:6A-7(c)] **at N.J.A.C. 12:110-2.1**.

6. 29 [C.F.R. §] **CFR** 1904.2, Partial exemption for establishments in certain industries, does not apply to any [New Jersey Public Employer] **employer** as defined [in] **at N.J.A.C. 12:110-[2] 2.1**; and

7. 29 [C.F.R. §] **CFR** 1904.39: Reporting fatalities and multiple hospitalization incidents must be reported to the Office of Public Employees Occupational Safety and Health (OPEOSH) [via] **through** the 24-hour hotline number (800) 624-1644, the 24-hour fax line (609) 292-3749, or in person to the OPEOSH at 225 East State Street, 8th Floor West, Trenton, NJ 08625 within eight hours of the occurrence.

SUBCHAPTER 6. VARIANCES

12:110-6.4 Form of documents for variance

(a) (No change.)

(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) (No change.)

12:110-6.5 Temporary variance

(a)-(e) (No change.)

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

(g) (No change.)

12:110-6.6 Permanent variance

(a)-(b) (No change.)

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

(d) (No change.)

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.-4. (No change.)

5. If the applicant is an employer, a certification that the applicant has informed his **or her** affected employees of the application by:

i. (No change.)

ii. Posting at the place where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself)[.];

iii. In the event that an employer has an internet site or intranet site for exclusive use by its employees and to which all employees have access, posting of the application on the employer's internet or [page=1777] intranet site shall satisfy the conspicuous posting requirement set forth at (a)5ii above; or

iv. Providing the application to an employee representative through email shall satisfy the requirement at (a)5i above, that the employer give a copy of the application to each affected employee's employee representative where one exists.

6. (No change.)

(b)-(c) (No change.)

SUBCHAPTER 7. DISCRIMINATION AGAINST EMPLOYEES

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] **pursuant to**, or related to, the Act with the employer, the Commissioner of Labor and Workforce Development, [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.-6. (No change.)

7. Requested information or advice from the Department of Labor and Workforce Development or the Department of Health [and Senior Services]; **or**

8. (No change.)

(b) (No change.)

12:110-7.9 Refusal to work

(a) (No change.)

(b) If hazardous conditions [which] **that** may be violative of the Act are not corrected by the employer once brought to his **or her** attention or if there is dispute about the existence of a hazard, the employee shall have the opportunity to request inspection of the workplace, or to seek the assistance of other public agencies [which] **that** have responsibility in the field of safety and health. The employer shall permit the employee to contact the Department of Labor **and Workforce Development**, the Department of Health [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 or herself to an imminent danger of serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses, in good faith, to expose himself or herself to the imminent danger, and he or she believes that a subsequent discharge, discipline, or other employer discrimination activity results from this refusal, he or she may file a discrimination complaint with the Commissioner of Labor and Workforce Development in the manner prescribed in this section.

1. (No change.)

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

SUBCHAPTER 8. ON-SITE CONSULTATION

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-enforceable On-Site Consultation initiatives.

(b) (No change.)

NEW JERSEY REGISTER

Copyright © 2022 by the New Jersey Office of Administrative Law

End of Document