

**Part
59**

Workplace Safety and Loss Prevention Program

Part 59 of Title 12 of the Official Compilation of Codes, Rules, and Regulations of the
state of New York (Cited as NYCRR 59)



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Subchapter A. The Industrial Code
Part 59. Workplace Safety and Loss Prevention Program
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Section 59-1.1. Title and citation.

Within and for the purpose of the Department of Labor, this Part (rule) may be known as Industrial Code Rule No. 59, relating to the conduct of the Workplace Safety and Loss Prevention Program. It may be cited as Code Rule 59 Workplace Safety and Loss Prevention as an alternative and without prejudice to its designation and citation established by the Secretary of State.

Section 59-1.2. Purpose and intent of rule.

This rule is intended to set forth the responsibilities of employers and workplace safety and loss prevention consultants participating in the Workplace Safety and Loss Prevention Program. The Workplace Safety and Loss Prevention Program is intended to reduce workplace injuries and result in lower workers' compensation costs for employers. Furthermore, it is the purpose and intent of this rule to establish procedures which must be followed by individuals seeking departmental certification as a workplace safety and loss prevention consultant.

Section 59-1.3. Scope and application.

This rule shall apply to all employers whose most recent annual payroll is in excess of \$800,000 and whose most recent experience rating exceeds the level of 1.2.

Section 59-1.4. Definitions.

As used in this Subpart (rule) the following terms mean:

- (a) Commissioner. The Commissioner of Labor or his/her designee.
- (b) Consultant. An individual certified by the Department of Labor as a workplace safety and loss prevention consultant, or, a Department of Labor employee assigned to conduct workplace safety and loss prevention consultations.
- (c) Department. The Department of Labor of the State of New York.

Section 59-1.5. Employer's duties and responsibilities.

An employer whose most recent annual payroll is in excess of \$800,000 and whose most recent experience rating exceeds the level of 1.2 shall be subject to the following requirements:

- (a) Notification.
 - (1) The employer shall, within 30 days after receipt of written notification from the Compensation Insurance Rating Board or other such rating organization that they are required to undergo a workplace safety and loss prevention consultation, arrange for a workplace safety and loss prevention consultation and evaluation of all subject worksites.
 - (2) The employer shall, within 10 days after completing arrangements for the required consultation, notify the department and the employer's insurer in writing of the means by which the consultation and evaluation is to be accomplished. The written notice shall include the following information:
 - (i) the date on which the consultation is scheduled to begin;
 - (ii) the date by which the consultation must be completed, pursuant to subdivision (b) of this section;
 - (iii) the name and address of the person(s) performing the consultation service;

- (iv) copies of workers' compensation C-2 forms for the previous four years; and
 - (v) the certification number of the consultant if the consultation is to be performed by other than a department employee.
- (b) Inspection. The workplace safety and loss prevention consultation shall be completed, and the consultant's written evaluation shall have been received by the employer, within 75 days after receipt by the employer of written notification from the Compensation Insurance Rating Board or such other rating organization that the employer is required to undergo a workplace safety and loss prevention consultation.
- c) Report. Within 30 days after receipt of the completed evaluation from the consultant, the employer shall provide the department and the employer's insurer with a copy of the report. The employer shall include with the report a written statement which shall include the following information:
- (1) the means by which any remedial action is to be accomplished;
 - (2) the expected starting and completion dates for any remedial action; and
 - (3) the names of the individual(s) and/or organization that will be providing any remediation service.
- (d) Remediation. All required remediation shall be implemented within a reasonable period of time but shall not exceed six months from the date the employer receives the completed evaluation from the consultant.
- (e) Access to facilities. Any employer subject to this rule shall make available to the consultant, department and employer's insurer all required records, documents, personnel, and facilities required for the consultant to carry out the requirements of this rule.

Section 59-1.6. Insurer responsibility.

- (a) The employer's insurer shall inspect the employer's subject facilities no later than 60 days from the expiration of the six months allotted for completion of the remediation. The purpose of the inspection shall be to evaluate compliance with the consultant's report.
- (b) The insurer shall, within 45 days after the completion of the compliance inspection, provide the employer and the department with a copy of its inspection report.

Section 59-1.7. Compliance.

If the employer does not arrange for a workplace safety and loss prevention consultation and evaluation or fails to implement recommended remedial action within the times prescribed, the insurer shall surcharge the employer's manual rate premium by .05 (five percent) for the next ensuing policy period. For each policy period that noncompliance continues, an additional .05 (five percent) surcharge shall be charged by the insurer.

Section 59-1.8. Appeals.

An employer may challenge an insurer's determination that the employer has not complied with the consultant's recommendations by appeal to the department.

- (a) Filing. Any employer who wishes to challenge an insurer's finding of noncompliance shall, within 30 days from receipt of the insurance inspector's report, required in section 59-1.6(b) of this Subpart, file a notice of appeal with the department and shall provide a copy to the insurer.

- (b) Inspection. The commissioner shall, within 90 days from receipt of the notice of appeal, schedule an inspection and shall inform the employer in writing, with a copy to the insurer, of the determination, and shall set forth the reasons for the determination. Such determinations are final.

Section 59-1.9. Workplace Safety and Loss Prevention Program.

- (a) Upon the recommendation of the consultant, the employer shall institute and maintain an effective safety and loss prevention program to identify, evaluate and control workplace hazards. Employers' workplace safety and loss prevention programs, which were developed prior to the promulgation of this rule, may be used to satisfy this requirement if they meet the criteria for an acceptable program set forth in this section. Such program shall be in writing and shall at a minimum:
- (1) set forth policies, procedures and practices that recognize and protect employees from occupational safety hazards;
 - (2) establish and communicate a clear goal for the Workplace Safety and Loss Prevention Program and the mechanisms which will be utilized in meeting this goal;
 - (3) provide for visible top management leadership in implementing the program and ensure that all workers at the site are provided equally high quality safety protection, so that all will understand that management's commitment is serious;
 - (4) provide for and encourage employee involvement in the structure and operation of the program, so that they will commit their insight and energy to achieving the goals and objectives of the safety program. Such involvement shall be accomplished through the recognized employee organization(s), if any;
 - (5) assign and communicate responsibilities for all aspects of the Workplace Safety and Loss Prevention Program to managers, supervisors and employees so that such persons know and understand what is expected of them in the implementation of the program. Provide a system to hold managers and supervisors accountable for their responsibilities under the Workplace Safety and Loss Prevention Program;
 - (6) the employer shall ensure that the supervisors, managers and employees understand their responsibilities under the Workplace Safety and Loss Prevention Program and their importance to the safety of the workplace. In particular, appropriate training for managers, supervisors and employees shall enable them to:
 - (i) recognize potential hazards;
 - (ii) maintain safety protection in the work area; and;
 - (iii) reinforce employee training on the nature of the potential hazards and required protective measures;
 - (7) provide a reliable system for employees to notify management personnel of conditions that appear hazardous or of noncompliance with the terms of the Workplace Safety and Loss Prevention Program without fear of reprisal and provide a mechanism to ensure timely and appropriate responses;
 - 8) provide a mechanism to investigate accidents so that the root cause(s) and means for preventing a recurrence are identified. For the purposes of this rule, the term accident shall mean any unexpected happening that interrupts the work sequence or process and that may result in injury, illness or property damage;

- (9) provide a means to review injury and illness trends over time so that patterns with common causes can be identified and eliminated;
 - (10) establish a mechanism for the employer to conduct ongoing, periodic in-house safety inspections so that new or previously missed hazards or failures in controls are identified. Such inspections shall be conducted with a frequency necessary to be effective and this frequency shall be reviewed by the consultant performing the workplace safety and loss prevention consultation;
 - (11) address the impact of emergency situations and develop written plans and procedures to insure employee safety during such emergencies. For the purposes of this rule, the term emergency situation shall mean an unforeseen single event or combination of events that calls for immediate action to prevent, control or contain injury or illness to person(s) or damage to property; and
 - (12) establish procedures for transmitting and enforcing safe work practices in the workplace through training, positive reinforcement and correction of unsafe performance.
- (b) Such program shall be provided to the recognized employee organizations and shall be made available to the employees upon request.

Section 59-1.10. Workplace safety and loss prevention consultation and consultation fee charged by department.

- (a) The employer shall undergo a workplace safety and loss prevention consultation which shall include an analysis of the Workplace Safety and Loss Prevention Program established for that workplace and an on-site hazard survey of the entire workplace.
- (b) Such consultation shall be performed by a consultant employed by the department or by a consultant certified by the department.
- (c) Where the consultation is performed by the department, the fee for such consultation shall be \$350 per day. Any additional costs incurred during the course of the consultation, such as sampling, laboratory fees and laboratory reports, shall be paid by the employer in addition to the consultation fee.

Section 59-1.11. Workplace safety and loss prevention consultant--duties and responsibilities.

All consultants performing workplace safety and loss prevention consultations for employers under this rule shall comply with the following:

- (a) Consultants other than those employed by the department shall be certified by the department in accordance with procedures and criteria set forth in this rule.
- (b) Consultations conducted by all consultants shall include both a survey of the workplace and an assessment of the employer's Workplace Safety and Loss Prevention Program.
- (c) In the case of employers with more than one work site, the consultant shall consider loss and claim information by location in the same manner as he or she would do for an employer with one work site in order to identify hazards which necessitate remediation.
- (d) Wherever industrial hygiene sampling is determined to be necessary during the conduct of such consultation, the consultant shall utilize sampling and analytical procedures generally recognized within the hygiene profession, such as but not limited to the Chemical Information Manual OSHA CPL 2-2.43A. All sample analyses must be performed by a laboratory that has been accredited by the American Industrial Hygiene Association or certified by the New York State

Health Department Environmental Laboratory Approval Program (ELAP).

- (e) The consultant shall include as a part of the overall consultation an opening conference with the employer, and recognized employee representatives, if any, to discuss:
 - (1) the manner in which the consultation will be conducted;
 - (2) the information and other assistance which will be required of the employer in order to allow the consultant to perform his/her function;
 - (3) the involvement of employees or employee representatives in the consultation; and
 - (4) the sampling which might be required as part of the consultation as well as the sampling protocols which will be utilized.
- (f) Upon completion of the consultation, the consultant will conduct a final closing conference with the employer, and with the recognized employee organization(s) if any, to discuss the consultant's findings and recommendations.
- (g) The consultant shall provide the employer with a written report at the conclusion of the consultation. The written report must be forwarded to the employer by the consultant as soon as possible following completion of the consultation but no more than 30 working days from the closing conference date.
- (h) The workplace safety and loss prevention consultation report shall, at a minimum, contain the following:
 - (1) the name(s) of the consultant(s) performing the consultation and, if the consultant is not employed by the department, the department certification number of the consultant;
 - (2) the name and location of the establishment at which the consultation was performed;
 - (3) the date(s) on which the consultation was conducted;
 - (4) the name of the employer for whom the report was prepared and the name of the employer's insurer and contact person;
 - (5) the activity or activities in which the employer is primarily engaged and a synopsis of the work operation(s);
 - (6) the number of employees at the work site, the most recent experience modification rate (EMR), standard industrial code (SIC) number and Federal employer identification number (FEIN);
 - (7) a complete review of each of the required elements of a Workplace Safety and Loss Prevention Program as set forth in section 59-1.9 of this Subpart and an assessment of the employer's compliance with these requirements;
 - (8) a description of all monitoring performed at the establishment, including the methodology used, the identification of the laboratory processing the sample and the monitoring results achieved; and
 - (9) identification of and recommendations for the correction of all workplace safety and loss prevention issues or deficiencies noted during the workplace safety and loss prevention consultation.

Section 59-1.12. Certification of workplace safety and loss prevention consultants.

- (a) Any individual performing a workplace safety and loss prevention consultation for a participating

employer under this rule, other than those consultants employed by the department for this purpose, shall be certified by the department.

- (b) In order to be eligible for certification, individuals must possess the following qualifications:
- (1) certification as a certified safety professional (CSP) granted by the Board of Certified Safety Professionals (BCSP);
 - (2) certification as a certified industrial hygienist (CIH) granted by the American Board of Industrial Hygiene (ABIH);
 - (3) certification as a certified safety executive (CSE), certified safety manager (CSM), or certified safety specialist (CSS) granted by the World Safety Organization;
 - (4) New York State license as a professional engineer, with five years of documented professional safety and health experience within the last eight years prior to the filing of the application for certification;
 - (5) a Bachelor of Science degree in industrial hygiene, safety, occupational safety and health, biology, chemistry, environmental health and science, physics, engineering, or a related field, with five years documented professional safety and health experience within the last eight years prior to the filing of the application for certification deemed acceptable by the commissioner;
 - (6) eight and one-half years of documented professional safety and health experience deemed acceptable to the commissioner within the last 10 years prior to the filing of the application for certification;
 - (7) an insurance professional with qualifications as an Associate in Loss Control Management or an Associate in Risk Management plus five years appropriate safety and loss prevention experience; or
 - (8) a department employee designated by the commissioner and in one of the following Civil Service titles: Safety and Health Inspector, Senior Safety and Health Inspector, Associate Safety and Health Inspector, Supervising Safety and Health Inspector, Senior Industrial Hygienist, Associate Industrial Hygienist, Supervising Industrial Hygienist, Principle Industrial Hygienist, Senior Safety and Health Engineer, Associate Safety and Health Engineer or Principle Safety and Health Engineer. Designated department employees are automatically certified and shall not apply to the department for certification nor pay a certification fee.
- (c) For the purposes of the experience qualification set forth in this section, professional safety and health experience is work experience which includes analysis, synthesis, design, investigation, planning, and communication to optimally control or reduce the hazards and exposures which would be detrimental to the safety and health of individuals. Additionally, professional safety and health experience is work experience in which an applicant has developed and defended recommendations for analytical approaches and engineering or administrative controls designed to control or reduce safety and health hazards to individuals.
- (d) Individuals who perform the workplace safety and loss prevention consultation or review functions set forth in this rule shall limit their activities under this rule to the area(s) of their expertise.
- (e) All applications for certification as a consultant shall be submitted to the department in writing on forms provided for that purpose and shall be accompanied by any other information or

documentation deemed necessary by the department. In addition, all applications shall be accompanied by a nonrefundable application fee of \$100 and shall be sent to the address specified in the application package.

- (f) The commissioner shall notify the applicant in writing of the issuance or denial of the certification or of the need for further information from the applicant in order to process the application. Notification of denial of an application shall set forth the grounds for such denial.
- (g) Upon approval of the application for certification, applicants will be assessed a nonrefundable certification fee which shall be a sliding scale, certification fee for an individual or firms that provide consultation services, as follows:

# of Individuals Seeking Certification	Fee Per Person
1 – 2	\$1,000
3 – 5	\$ 700
6 – 10	\$ 550
11 – 20	\$ 500
21+	\$ 450

- (g) If the applicant is approved by the department, the nonrefundable application fee of \$100 will be applied to the certification fee.
- (h) Applicants must apply for recertification every three years, and will be assessed a recertification fee which shall be a sliding scale, recertification fee for an individual or firms that provide consultation services, as follows:

# of Individuals Seeking Recertification	Fee Per Person
1 – 2	\$300
3 - 5	\$210
6 – 10	\$165
11 – 20	\$150
21 +	\$135

- (h) Applicants for recertification must advise the department of any circumstances which have occurred within the last three years which would disqualify them from recertification pursuant to the criteria set forth in this section. There shall be no application fee for recertifications.
- (i) A consultant's certification may be suspended or revoked by the commissioner upon receipt of a complaint by the department and upon a determination by the commissioner that:
 - (1) the consultant's hazard analysis or safety and loss prevention program development is in conflict with generally recognized good safety practices that are applicable to the worksite;
 - (2) the consultant knowingly included false or misleading information in any report required by this rule; or
 - (3) the consultant no longer meets the qualifications for certification set forth in this rule.
- j) Upon making a determination that a consultant's certificate should be revoked or suspended, the commissioner shall inform the consultant in writing, setting forth the reasons for the determination.
- (k) A consultant's certificate which has been suspended or revoked may be reinstated under the following circumstances:
 - (1) If the revocation or suspension was premised upon a failure of the consultant to meet the

qualifications for certification set forth in this section, upon a demonstration by the consultant that those qualifications have been met.

- (2) If the revocation or suspension was premised upon findings described in paragraphs (i)(1) and (2) of this section, upon the commissioner's review and approval of the re-application for such certification by the individual. Such re-application may be submitted no sooner than 30 days prior to the expiration of the period of suspension or revocation established by the commissioner.
- (1) An individual applying for reinstatement of a workplace safety and loss prevention consultant certification shall be subject to the same procedures as those which pertained to application for the original certificate, except that in the event that certification is reinstated within the period of time during which it would have been valid but for its revocation or suspension, the certificate holder shall not be required to pay a new certification or application fee for such reinstated certification.

Section 59-1.13. Severability.

If any provision of this rule or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this rule which can be given effect without the invalid provisions or applications and to this end the provisions of this rule are declared to be severable.

Section 59-1.14. Applicability of other State and Federal regulations.

Nothing contained in this rule shall be read or applied in such a manner as to abrogate or otherwise limit the responsibility of an employer subject to this rule to comply with all requirements set forth in State and Federal safety and health standards to which the employer would otherwise be subject, nor shall any provision of this rule be read or applied in such a manner as to abrogate or otherwise limit the liability of such employer to fines or other penalties to which it would otherwise be subject for failure to comply with such rules and regulations.