

GUIDELINES TO CODE RULE 59

COMPULSORY WORKPLACE SAFETY AND LOSS PREVENTION PROGRAM

OVERVIEW

The Workplace Safety and Loss Prevention Program was created to reduce workplace injuries and lower Workers' Compensation costs for employers. You can find specific details on the Program in Section 134 of the Workers' Compensation Law and the Department of Labor's (DOL) Industrial Code Rule (ICR) 59. You can access both the statute and the regulations from the DOL web site at: www.labor.ny.gov.

THE NOTIFICATION

The program is required for all employers whose most recent:

- Annual payroll is in excess of \$800,000; **and**
- Experience rating exceeds 1.2.

If you meet these criteria, the New York State Compensation Insurance Rating Board (CIRB) will notify you. They send out notices several times a year. CIRB also notifies DOL, so we can monitor compliance. A notice is effective on the day you receive it in the mail. Any employer who receives a notice **MUST** participate. Once you receive a notice, you are subject to this program, even after your experience rating is reduced.

THE CONSULTATION

If you receive a notice, you must schedule a consultation and evaluation. The consultation will include:

- A review of your safety procedures;
- An assessment of the employer's compliance with the requirements of ICR 59; and
- A hazard survey of the workplace.

A Consultant certified by the DOL must perform the consultation unless a DOL employee does it. You can find a list of certified Consultants on the DOL web site at: www.labor.ny.gov/WSLPIP.html.

GETTING A CONSULTATION

Any Consultant certified by the DOL may provide the needed services. You should review the list of Consultants posted on the DOL web site. Use someone who is currently certified. Many insurance companies have several certified Consultants, so ask your insurer for help. Contact Consultants directly for availability and fees.

USING THE DOL

To have DOL staff conduct the consultation, you must submit a request. Make the request on company letterhead, with an original signature in ink. The request must include:

- A copy of the CIRB Worksheet, which should be available from your insurer. It shows:
 - the experience modification rate;
 - payroll information; and
 - actual losses for the covered period.
- A list of your New York State locations.

You may also submit a request via email to WSLPIP@labor.ny.gov. You may send the documentation separately, or scan it and email it as an attachment.

Once you have scheduled a consultation, you must send notice to the DOL and your insurer. You are required to provide:

- Dates the consultation is set to start and finish;
- Name and address of the person(s) performing the consultation service; and
- The Consultant's certification number

COMPLIANCE

The Consultant will give you a written evaluation at the end of the consultation. You must send a copy of the evaluation to both the DOL and your insurance carrier. You must include a statement that describes how you will take the remedial action recommended in the evaluation. Specifically:

- Who will do it
- How and when they will do it.

After remediation is completed, your insurer will conduct an inspection. They will make sure that you have complied with the evaluation's recommendations. The insurer will give a copy of their findings to you and the DOL. If you disagree with the insurer's findings, you may appeal to the DOL.

GENERAL GUIDELINES

You should contact your workers' compensation insurer after you get the notice from CIRB. This is true whether or not your insurer's Consultant is going to do the consultation. In all cases, a representative from your insurer must do a re-inspection to make sure you comply with ICR 59. You should keep your insurer up to date about what you are doing to comply.

You or the Consultant should plot a compliance time line. This will help you to understand the deadlines you have to meet. See the sample time line on page 4.

A consultation should only address areas where you have primary control over the workplace.

FEES

The fee for a consultation performed by DOL staff is \$350 per day. The fee includes:

- On-site consultation time;
- Travel to and from the employer's facility; and
- Report writing time.

There may be other costs for sampling, lab fees, etc. Private sector Consultants may charge fees set by their organizations. *Please note that these fees may exceed those charged by the DOL. The DOL does not control the amount of time to conduct a consultation, nor the fees charged by private Consultants.*

PENALTIES

If you do not set up a consultation, your insurer will charge a penalty. Your insurer will also charge a penalty if you do not comply with the recommendations in the evaluation report within the deadlines. There also may be a penalty for failing to meet deadlines. The penalty is a five percent surcharge to your manual rate premium for the next policy period. The surcharge is cumulative. If you continue non-compliance, the insurer will charge an additional five percent each year. Penalties will accrue until you comply with ICR 59.

Once you are subject to this program, you must continue to comply with ICR 59 indefinitely.

APPEAL PROCESS

When an insurer re-inspects a work site, they may determine that it is not in compliance. If you disagree, you may appeal. You must file an appeal with the DOL within 30 days of getting the insurer's re-inspection report. You must send a copy of the appeal to the insurer. To resolve an appeal, the DOL will inspect the work site. DOL will then issue a written decision. That decision is binding on all parties.

THE PROCESS

You receive a notice from CIRB:

Step 1: Immediately notify your workers' compensation insurer. You should also find out if your insurer can provide the consultation service.

Step 2: Within 30 days of the notice, make arrangements to hire a Consultant. You may hire a private Consultant, the insurer's Consultant, or the DOL.

Step 3: Within 10 days (40 days from notice), notify the DOL and your insurer, in writing, of the following:

- The date that the consultation is scheduled to begin;
- The date that the consultation is scheduled to be completed (no more than 75 days from the date you got the notice);
- The name and address of the Consultant you hired; and,
- The certification number of the Consultant.

Step 4: Within 75 days of the notice, the certified Consultant must complete the consultation. The Consultant must send the evaluation report to the employer within 30 days of the end of the consultation.

Step 5: Within 30 days of receiving the Consultant's evaluation report, send a copy to the DOL. You must include a letter describing how you will go about complying with the recommendations in the report. You must include the names of any service providers that you will hire to help you get into compliance.

Step 6: You have 6 months from the date you get the evaluation report to comply with all recommendations.

Step 7: Within 60 days of complying with all recommendations, notify your workers' compensation insurer to re-inspect the workplace. The insurer will verify compliance with the Consultant's report.

Step 8: Your insurer must issue a re-inspection report and send it to you and the DOL. You must maintain the required elements of the Workplace Safety and Loss Prevention Program.

EMPLOYER'S SAMPLE TIMELINE

January 1: You receive notice from CIRB.

February 1: You must have arranged for a consultation.
(Within **30 DAYS** of the notice.)

February 10: You must provide the consultation information to your insurer and the DOL in writing.
(Within **10 DAYS** of the consultation arrangements.)

March 16: You must have been inspected AND received the report from the Consultant.
(Within **75 DAYS** of the notice.)

April 16: You must provide your insurer and the DOL with a copy of the Consultant's report.
(Within **30 DAYS** of receipt of the Consultant's report.)

September 16: You must implement the recommendations contained in the report.
(No more than **6 MONTHS** after receipt of the Consultant's report.)

November 16: Your insurer must conduct a re-inspection of the work site.
(Within **60 DAYS** of the expiration of the six months allotted for compliance.)

January 1: Your insurer must submit a copy of the re-inspection report to you and the DOL.
(Within **45 DAYS** of the completion of the re-inspection.)

February 1: You must file a notice of appeal with the DOL if you want to dispute the insurer's compliance inspection findings. You must provide a copy of the appeal to the insurer.
(Within **30 DAYS** of receipt of the re-inspection report.)

IMPORTANT ADDRESSES

COMPENSATION INSURANCE RATING BOARD

CIRB is responsible for determining experience modification rating. This is one of the criteria for inclusion in the compulsory Workplace Safety and Loss Prevention Program. Address any questions about your experience modification to:

New York Compensation Insurance Rating Board
200 East Forty-Second Street
New York, NY 10017
TEL: (212) 697-3535
FAX: (212) 972-1393
WEBSITE: www.nycirb.org

DEPARTMENT OF LABOR

The DOL is responsible for:

- Determining which employers fall under the compulsory Program
- Certifying qualified Consultants
- Conducting consultations
- Reviewing insurance company re-inspection reports and
- Ensuring compliance with ICR 59

All notices, evaluation reports, and re-inspection reports should be sent to the address below. We post a list of certified Consultants quarterly on the DOL web site.

For More Information Contact:

New York State Department of Labor
Workplace Safety and Loss Prevention Program
State Office Campus, Building 12, Room 167
Albany, NY 12240

TEL: (518) 457-1125

FAX: (518) 457-1167

EMAIL: WSLPIP@labor.ny.gov

WEB: labor.ny.gov/WSLPIP.html

CONSULTANT'S ROLE

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

- (a) All Consultants shall include both a survey of the workplace and an assessment of the employer's workplace safety and loss prevention program in their consultation report.
- (b) For employers with more than one work site, the Consultant shall consider loss and claim information by location the same way he or she would do for an employer with one work site to identify hazards which need remediation.
- (c) Wherever industrial hygiene sampling is necessary, the Consultant shall use 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).
- (d) 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 way they will conduct the consultation
 - (2) The information and other assistance the employer must provide to allow the consultant to the job
 - (3) The involvement of employees or employee representatives
 - (4) The sampling that might be required as part of the consultation, as well as the sampling protocols used
- (e) Upon completion, the Consultant will hold a final closing conference with the employer and with the recognized employee organization(s), if any, to discuss the Consultant's findings and recommendations.
- (f) The Consultant shall provide the employer with a written report at the conclusion of the consultation. The Consultant must send the written report to the employer as soon as possible after completing the consultation, but no more than thirty (30) working days from the closing conference date.

A CONSULTANT'S REPORT MUST INCLUDE:

1. Documentation of an opening and closing conference by consultant.
2. An assessment of the employer's workplace safety and loss prevention program (Based upon C-2's or loss date).
3. A review of the frequency of in-house safety inspections (under program element #10).
4. A physical survey of the employer's workplace.
5. The name and certification number of the consultant.
6. Name and location of the establishment where the consultation was performed.
7. The date of the consultation.
8. The name of the employer, employer's insurer and contact person.
9. The primary activity of the employer and a synopsis of the work operation.
10. The number of employees, most recent experience modification rate, the Rating Board File Number (RBN), the Standard Industrial Classification (SIC) and Federal Employer Identification Number (FEIN).
11. A complete review and assessment of the elements of a safety and loss program.
12. A description of monitoring and identification of laboratory processing.
13. An identification of and recommendations for corrections of all issues or deficiencies (by employer).