State Guide to
Workplace Safety Regulation

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I. Introduction

This manual reviews some of the most basic and most important workplace safety regulations for the state of New York. Though most employers follow federal Occupational Safety and Health Administration (OSHA) guidelines on this matter, New York has its own state-run plan called Public Employee Safety and Health (PESH). PESH is unique because it only applies to those in the public sector, including state agencies and political subdivisions. Private-sector employers looking for insight on workplace safety laws should reference the Federal (General Industry) Workplace Safety Regulations Guide.

Navigating workplace safety laws and regulations can be overwhelming, so use this guide to become familiar with the basics. It will help you build a foundation of knowledge on state expectations for mitigating on-the-job hazards. By knowing New York laws, you can effectively reduce your risk of liability. Though this manual covers many areas, it is not meant to be exhaustive or construed as legal advice. It also may not address all compliance issues with federal, state and local laws. Use the New York Workplace Safety Regulations Guide as a reference, but contact Jaeger & Flynn Assoc., Inc. at 800-388-8538 or legal counsel to talk about compliance requirements or to ask questions about material covered here.

II. PESH Overview and Definitions

*PESH’s definition of employer ➔ For purposes of PESH, it is any public entity.*

*PESH’s definition of employee ➔ Any person permitted to work by an employer.*

Are employers in public sector covered by PESH? Yes*

*New York state’s plan covers all public authorities, governmental agencies or instrumentalities

Does PESH cover state agencies and political subdivisions? Yes

Are employers in private sector covered by PESH? No

Does PESH cover charitable organizations? No

Are any employees excepted from PESH coverage? No

III. Employer Penalties for Violating Workplace Safety Regulations

What is the maximum civil penalty in New York for non-serious violations of the PESH Act? $50 per day

What is the maximum civil penalty in New York for serious violations of the PESH Act? $200 per day

IV. Employer Duties and Responsibilities

a. Reporting Requirements

Q: What must be reported under PESH regulations?
   A: Any fatalities, and work-related injuries resulting in inpatient hospitalization of more than two public employees.

Q: Who must file the report?
   A: The employer is always responsible for filing the PESH report.

Q: Where should the report be sent?
   A: The Division of Safety and Health within the New York State Department of Labor.
Q: What is the reporting timeframe?
   A: All necessary reports must be orally reported by telephone or in person within eight hours of the incident causing death or multiple hospitalizations.

Q: How do PESH workplace safety laws relate to New York’s workers’ compensation laws?
   A: New York state workers’ compensation laws differ dramatically from PESH reporting requirements. The workers’ compensation statutes require reporting to occur within 10 days of injuries resulting in the following:
   - Lost work time of more than one day,
   - Medical treatment beyond basic first aid, or
   - More than two treatments administered by a person rendering first aid

Q: Are there other notable reporting requirements unique to New York?
   A: No.

b. Recordkeeping Requirements

Are employers required to keep record of all incidents resulting in occupational injury and/or illness?  Yes
OSHA 300 Form required where applicable?  Yes
OSHA 300A Form required where applicable?  Yes
OSHA 301 Form required where applicable?  Yes

Q: What are PESH requirements for determining whether an injury is recordable?
   A: Requirements are the same as the federal standards but only apply to public employers.

Q: How long do employers have to keep these records?
   A: Length of recordkeeping standards is the same as the federal standards, but they only apply to public employers.

Q: Are there other notable recordkeeping requirements unique to New York?
   A: PESH closely follows federal OSHA recordkeeping requirements and does not have any other unique requirements.

c. Notice Posting Requirements

Q: What workplace posters must employers in New York post?
   A: In addition to federal posting requirements, all New York employers – whether covered by the state plan or not – are also required to have the following notices displayed in the workplace:
   - Criminal Convictions Records Poster
   - Discrimination Poster
   - Minimum Wage Poster
   - Safety and Health Poster
   - Public Work/Prevailing Wage Rates Poster
   - Public Work Project Poster
   - Unemployment Insurance Poster
   - Workers’ Compensation and Disability Benefits Poster
   - Smoking Law Notice

Q: Do employers have to post their citations illustrating violation of PESH or other state labor laws?
A: PESH requires that an employer post an order to comply in a conspicuous place at or near each place or violation cited in the order where it is clearly visible to affected employees.

Q: Are there any other notable posting requirements unique to New York?
A: No

V. Required Safety Policies and Procedures

General written safety plan required? Yes
Written emergency action plan required? Yes*
*Plan must be written for employers with 10 or more employees, but employers with fewer than 10 employees have the option of implementing an oral plan
Written ergonomics plan required? No
Written fire safety plan required? Yes*
*Plan must be written for employers with 10 or more employees, but employers with fewer than 10 employees have the option of implementing an oral plan
Written hazard communication plan required? Yes
Written hazard assessment plan required? Yes
Written injury/illness prevention plan required? No
Written lockout/tagout plan required? Yes*
*New York follows federal standards in this area, which require select employers to have a written lockout/tagout plan, but not all employers. See federal OSHA requirements.
Written workplace security plan required? No
Are there other specialized, written plans required for employers in select industries? Yes*
*Employers subject to specific standards under PESH and OSHA may need to have additional safety policies in place

VI. General Employer Requirements
d. Providing Personal Protective Equipment (PPE)
Q: What PPE must employers require their employees to wear?
A: PESH requirements for PPE use are the same as the federal government’s standards with one notable addition. Construction contractors covered by PESH must set up equipment (scaffolds, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, etc.) so that employees have adequate protection from hazards.

Q: Are employers obligated to pay for PPE equipment?
A: New York statutes do not specify whether or not the employer must pay for PPE; instead, the law references the employer’s general duty to provide a safe working environment.

e. Education and Training
Q: Are there any notable employer education or training requirements unique to New York?
A: PESH follows federal standards regarding education and training requirements with a few additions regarding hazardous materials.
- Employers must have an education and training program in place for employees regularly exposed to any toxic substances.
- Toxic substance training must be complete before the employee begins any duties with the potential for exposure and must be conducted annually after the initial session.
Toxic substance training must include information on the substance name, location, properties, safe use, safe exposure conditions, flammability, explosively, reactivity, emergency treatment procedures and cleanup procedures.

**f. Precautionary Medical Examinations**

Q: Can employers require that employees undergo a precautionary, physical medical examination if they have been exposed to toxic – or potentially toxic – substances?

A: Yes, and New York employers may also require medical exams as a condition of employment or continued employment.

Q: Are employers required to pay for these examinations?

A: The employer must generally pay for all costs of employer-required medical examinations.

Q: What action can employers take if employees refuse to have the recommended precautionary medical examination?

A: Employees refusing to have the recommended precautionary medical examination may be disciplined (up to and including termination) or reported to a public health agency.

**g. Workplace Violence**

Q: Does New York have specific laws in place addressing employer responsibility and workplace violence?

A: There are no laws in New York requiring employers in general industry to follow certain workplace violence procedures. Since PESH applies only to public-sector employers, the state of New York cannot issue citations for workplace violence-related situations under the PESH general duty clause to private-sector employers. However, federal OSHA can cite under the general duty clause for the private sector.

However, there are special regulations in place for public employers in the state of New York. Employers with more than 19 full-time employees must first have their workplace examined for risk of violence and are the required to develop and implement a workplace violence prevention program based on the risks uncovered during the evaluation. Those employers must also take all necessary steps to create a violence-free workplace, including – but not limited to – making high-risk areas more open, installing proper lighting, minimizing the amount of on-hand cash, posting appropriate signs, providing conflict resolution training and establishing effective reporting systems. PESH’s Workplace Violence Prevention Program Guidelines, available free from the bureau’s website, helps implement an effective program.

Q: Has New York enacted a version of Society for Human Resource Management’s (SHRM) Workplace Violence Safety Act?

A: No.

**h. Ergonomic Standards**

Q: Does PESH have an ergonomic standard that employers must comply with?

A: No, though PESH can cite for unsafe ergonomic conditions under the general duty clause for the public sector, and federal OSHA can cite under the general duty clause for the private sector. If federal OSHA adopts ergonomic standards, PESH will also adopt them for New York public employers.

**i. Means of Access and Egress Regulation**
State regulation on entrances

*PESH defers to federal standards

State regulation on exits

PESH provides much more detailed specifications on exits than federal standards, including more strict laws on the number of exits, exit locations and measurement specifications. The statutes give different requirements for exit numbers for buildings, tiers/floors, rooms and small basements. These regulations also include rules for construction and enclosure of stairways both above and below grade.

State regulation on aisles

PESH has more strict regulations on aisle width.

State regulation on passageways

PESH has more strict regulations on the width of passageways.

VII. Regulations for Industry-Specific Issues

New York does not go into great detail outside of general industry standards like many states do. The only addition to the general industry standards within PESH is for firefighters. Employers must conduct a risk analysis to determine whether firefighters may become trapped at an elevation and need a self-rescue system. If employers determine that is the case, they are required to provide each firefighter with a fitted safety rope system that addresses all discovered risks.

VIII. Workplace Safety Policies Supplemental to OSH Act Procedures

Note: these regulations are outside the realm of federal and state OSHA plans, but were put in place to further protect employers and their employees and promote workplace safety.

j. Workplace Smoking Laws

Q: In what settings is smoking completely banned?
   A: New York state law bans smoking entirely in:
      - Most public, indoor areas (exceptions below)
      - Most indoor workplaces (exceptions below)

Q: In what settings is smoking permitted?
   A: New York state law permits smoking in:
      - Some parts of lodging establishments (hotels, motels, etc.)
      - Membership associations that do not have any employees
      - Tobacco businesses
      - Some cigar bars
      - Portions of outdoor dining areas, provided certain conditions are met
      - Enclosed rooms of some health care facilities, adult care facilities and community mental health facilities that provide day treatment
      - During tobacco promotion events held in enclosed rooms of bars, restaurants and convention centers, but no more than two days out of the year
      - Private residences and vehicles

Q: What kind of smoking signage must employers post?
   A: In areas where smoking is prohibited, employers/owners must prominently and conspicuously post signs indicating as such with “No Smoking” lettering or the international no smoking symbol.

Q: Can any of the requirements of the statute or its associated costs be waived?

Note: these regulations are outside the realm of federal and state OSHA plans, but were put in place to further protect employers and their employees and promote workplace safety.
A: If an employer/owner can prove that following certain parts of the statute would be unreasonable or would cause undue financial hardship, the state may grant a waiver from a specific provision of the law.

Q: Are there laws banning discrimination of employees who exercise their smoking rights, whether that is to smoke or complain about the presence of smokers?
A: New York statutes do not specifically address this issue.

Q: Are there any state requirements that local law must follow?
A: Municipalities are free to enact smoking regulations that are more strict than state law.

Q: What are the penalties for employees or employers who violate smoking laws?
A: New York law does not specify separate penalties for employers and employees, but notes that civil penalties for violations could be substantial (up to $2,000 for every violation). New York law does note that employers who make a good-faith effort to ensure that employees comply with all portions of the statute have an affirmative defense to a violation.

Q: Are there any other smoking laws unique to New York?
A: Separate labor statutes prohibit smoking in all factories, except in areas designated by the Commissioner of Labor.

k. Drug Testing Laws
Q: Does New York have laws permitting drug testing in the workplace, and if so, who do they apply to?
A: No; New York does not have any specific statutes covering drug testing in the workplace.

IX. Regulations on Employment of Minors and Home Employment
l. Occupational Age Restrictions
Restrictions on employment of minors younger than 14 years? Yes
Prohibited occupations and occupational restrictions for minors younger than 14:
- Performing arts
- Modeling
- Newspaper distribution/delivery
- Working directly for parents
- Certain agricultural work
- Bridge tournament caddy

Restrictions on employment of minors under 16 years? Yes
Prohibited occupations and occupational restrictions for minors younger than 16:
- All work in factories
- Work at mental hygiene institutes, except certain volunteer work
- Those involving painting or exterior cleaning of buildings
- Those involving washing, cutting, grinding, slicing, pressing or mixing machinery

Restrictions on employment of minors under 18 years? Yes
Prohibited occupations and occupational restrictions for minors younger than 18:
- Work in custody or care of inmates at a penal institution
- Work in logging, at sawmills, lath mills, shingle mills or cooperage-stock mills
- Work as a motor vehicle helper
- Work in mines and quarries
- All slaughter, meat packing and rendering work
- All manufacturing, packaging and storage of explosives
- All construction work
- Brick, tile and allied products manufacturing
- Those involving freight or passenger elevators that are not automatic
- Those involving certain abrasive, polishing or buffing machines
- Those involving cleaning, oiling or adjusting belts of machinery
- Those involving paint, color or red/white lead packing
- Those involving preparing compounds with dangerous acids
- Those involving operating steam boilers
- Those involving radioactive substance, ionizing radiation, silica or other harmful dust exposure
- Those involving power-driven woodworking, metal forming, bakery and paper products machines
- Those involving circular saws, band saws or guillotine shears
- Those involving power-driven hoists
- Those involving dancing or performing before the public unclothed

Restrictions on employment for adults under 21 years? No

m. Penalty Schedule

General violation of youth employment laws

<table>
<thead>
<tr>
<th>Penalty class</th>
<th>Civil penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum fine</td>
<td>$1,000 first offense, $2,000 second offense, $3,000 subsequent offenses – all fines tripled if violation results in serious injury or death</td>
</tr>
</tbody>
</table>

Maximum jail time

General violation of youth employment laws

<table>
<thead>
<tr>
<th>Penalty class</th>
<th>Misdemeanor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum fine</td>
<td>$500 first offense, $5,000 second or subsequent offenses</td>
</tr>
</tbody>
</table>

Maximum jail time

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n. Home Employment Recordkeeping Requirements
Q: Do home employers have to keep records, and if so, what must they include?
A: Yes. New York labor law statutes regarding home employer recordkeeping requirements mandate that there be separate records containing the names and addresses of all home workers, home worker wages paid, inventory of home manufactured goods and inventory of the amount of materials delivered for home manufacture. In addition, employers must have labels with their name and address legibly written in English that they attach to all materials delivered for home work manufacturing.

X. Employee Rights Regarding Workplace Safety

o. Inspections
Are employees entitled to request an inspection of their employer’s facility and practices at any time? Yes
Are employees entitled to participate in PESH’s inspection process? Yes
Must an employee be paid while participating in the inspection process? Yes*
*PESH specifies that employees accompanying inspectors cannot have their wages reduced.
Are conversations between the inspector and the employee confidential? Yes*
*The employee’s name will be removed from inspection requests upon request.
When communicating with officials representing PESH, is the employee entitled to anonymity? No*
*An employee or representative must sign the complaint.

Q: If an employee requests an inspection and the state does not issue a citation, what are the employee’s rights?
A: PESH provides that the employee has the right to seek a review of the decision.

p. Whistleblowing and Employer Retaliation
Q: Does New York provide protection for employees from employer retaliation related to safety?
A: Yes. PESH recognizes wrongful discharge suits based on retaliation for exercising rights under workplace safety laws.

This guide is not meant to be exhaustive or construed as legal advice. It does not address all potential compliance issues with federal/state/local government or any other regulatory agency standards. Consult your licensed commercial property/casualty representative at Jaeger & Flynn Assoc., Inc. or legal counsel to address possible compliance requirements.

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