

§ 1952.11

29 CFR Ch. XVII (7-1-04 Edition)

§ 1952.11 State and local government employee programs.

(a) Each approved State plan must contain satisfactory assurances that the State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions which program is as effective as the standards contained in an approved plan.

(b) This criteria for approved State plans is interpreted to require the following elements with regard to coverage, standards, and enforcement:

(1) *Coverage.* The program must cover all public employees over which the State has legislative authority under its constitution. "To the extent permitted by its law," specifically recognizes the situation where local governments exclusively control their own employees, such as under certain "home rule" charters.

(2) *Standards.* The program must be as effective as the standards contained in the approved plan applicable to private employers. Thus, the same criteria and indices of standards effectiveness contained in §§ 1902.3(c) and 1902.4 (a) and (b) of this chapter would apply to the public employee program. Where hazards are unique to public employment, all appropriate indices of effectiveness, such as those dealing with temporary emergency standards, development of standards, employee information, variances, and protective equipment, would be applicable to standards for such hazards.

(3) *Enforcement.* Although section 18(c)(6) of the Act requires State public employee programs to be "as effective as standards" contained in the State plan, minimum enforcement elements are required to ensure an "effective and comprehensive" public employee program as follows: (See notice of approval of the North Carolina Plan, 38 FR 3041).

(i) Regular inspections of workplaces, including inspections in response to valid employee complaints;

(ii) A means for employees to bring possible violations to the attention of inspectors;

(iii) Notification to employees, or their representatives, of decisions that no violations are found as a result of complaints by such employees or their representatives, and informal review of such decisions;

(iv) A means of informing employees of their protections and obligations under the Act;

(v) Protection for employees against discharge of discrimination because of the exercise of rights under the Act;

(vi) Employee access to information on their exposure to toxic materials or harmful physical agents and prompt notification to employees when they have been or are being exposed to such materials or agents at concentrations or levels above those specified by the applicable standards;

(vii) Procedures for the prompt restraint or elimination of imminent danger situations;

(viii) A means of promptly notifying employers and employees when an alleged violation has occurred, including the proposed abatement requirements;

(ix) A means of establishing time-tables for the correction of violations;

(x) A program for encouraging voluntary compliance; and

(xi) Such other additional enforcement provisions under State law as may have been included in the State plan.

(c) In accordance with § 1902.3(b)(3), the State agency or agencies designated to administer the plan throughout the State must retain overall responsibility for the entire plan. Political subdivisions may have the responsibility and authority for the development and enforcement of standards: *Provided*, That the designated State agency or agencies have adequate authority by statute, regulation, or agreement to insure that the commitments of the State under the plan will be fulfilled.

These commitments supersede and control any delegation of authority to State or local agencies. (See Notice of Approval of Colorado Plan, 38 FR 25172.)

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Subpart B [Reserved]