

compliance under which public employers are issued notices of violation and orders to comply, for any violation of standards and orders. Such notices will fix a reasonable time for compliance. The Commissioner of Labor may seek judicial enforcement (mandamus actions) of orders to comply by commencing a proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules against public employers who fail to abide by the requirements of the order.

(f) *Review procedures.* Under the plan, employers, employees and other affected parties may seek informal review with the Department of Labor of a notice of violation, including the reasonableness of the abatement period, and/or may seek formal administrative review with the Industrial Board of Appeals, the independent State agency authorized by section 27-a(6)(c) of the New York Act to consider petitions from affected parties for review of the Commissioner of Labor's determinations pursuant to the New York Act. The "Rules of Practice and Procedure" of the Industrial Board of Appeals also permit public employees or their representatives to participate in the review process when a public employer contests a notice. Judicial review of the decision of the Industrial Board of Appeals may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules. The period fixed in the plan for contesting notices of violation is 60 calendar days, which is significantly longer than the 15 working day period allowed under the Federal OSHA program. However, New York has provided assurance, by Counsel's opinion of March 4, 1984, that it has the authority under Article 78 of the New York Civil Practice Law and Rules to obtain judicial enforcement of an uncontested order to comply upon expiration of the period stipulated for abatement, regardless of whether the 60 day contest period has expired or not. New York has also assured that should the State Labor Department's interpretation be challenged successfully appropriate legislative correction would be sought.

(g) *Staffing and resources.* The plan provides assurances of a fully trained, adequate staff, including 30 safety and 8 health compliance officers for en-

forcement inspections and 10 safety and 12 health consultants to perform consultation services in the public sector. The State has also given satisfactory assurances of adequate funding to support the plan. In addition, the plan assures that New York will meet the compliance staffing benchmarks established pursuant to the terms of the court order in *AFL-CIO v. Marshall* (CA 74-406).

(h) *Records and reports.* The plan provides that public employers in New York will maintain appropriate records and make timely reports on occupational injuries and illnesses in a manner substantially identical to that required for private sector employers under Federal OSHA. New York has assured that it will continue its participation in the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses and will include the public sector under its plan after approval. The plan also contains assurances that the Commissioner of Labor will provide reports to OSHA in such form as the Assistant Secretary may require, and that New York will participate in OSHA's Integrated Management Information System.

(i) *Voluntary compliance programs.* The plan provides that training will be provided to public employers and employees; seminars will be conducted to familiarize affected individuals with OSHA standards and requirements (as adopted by New York), and safe work practices; an on-site consultation program in the public sector will be established to provide services to public employers who so desire; and, all State agencies and political subdivisions will be encouraged to develop and maintain self-inspection programs as an adjunct to but not substitute for the Commissioner of Labor's enforcement inspections.

§ 1956.51 Developmental schedule.

The New York plan is developmental. The following is a schedule of major developmental steps as provided in the plan:

- (a) Adopt all OSHA standards promulgated as of July 1, 1983 (within three months after plan approval).
- (b) Promulgate regulations for inspections, citations and abatement,

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equivalent to 29 CFR part 1903 (within three years after plan approval).

(c) Submit State poster (within six months after plan approval).

(d) Extend BLS Survey of Injuries and Illnesses to State and local government (within one year after plan approval).

(e) Promulgate regulations for granting variances, equivalent to 29 CFR part 1905 (within one year after plan approval).

(f) Promulgate regulations for injury/illness recordkeeping, equivalent to 29 CFR part 1904 (within two years after plan approval).

(g) Develop employee nondiscrimination procedures (within three years after plan approval).

(h) Promulgate procedures for review of contested cases (within three years after plan approval).

(i) Promulgate regulations for development of alternative State standards, equivalent to 29 CFR part 1911 (within three years after plan approval).

(j) Develop Field Operations Manual (within three years after plan approval).

(k) Develop Industrial Hygiene Manual (within three years after plan approval).

(l) Develop on-site consultation procedures for state and local government employers (within three years after plan approval).

(m) Fully implement public employer/employee training and education program (within three years after plan approval).

[49 FR 23000, June 1, 1984, as amended at 52 FR 20073, May 29, 1987]

§ 1956.52 Completed developmental steps.

(a) In accordance with 29 CFR 1956.51(c), the New York Safety and Health poster for public employees only was approved by the Assistant Secretary on May 16, 1985.

(b) In accordance with 29 CFR 1956.51(a) the State of New York has promulgated standards identical to all Federal OSHA standards promulgated as of July 1, 1983. This supplement was approved by the Assistant Secretary on August 26, 1986. (51 FR 30449).

(c) In accordance with 29 CFR 1956.51(d) the State extended its par-

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ticipation in the Bureau of Labor Statistics (BLS) Survey of Injuries and Illnesses to the public sector. This supplement was approved by the Assistant Secretary on December 29, 1989.

(d) In accordance with 29 CFR 1956.51(e) the State promulgated regulations for granting variances, equivalent to 29 CFR part 1905, which were approved by the Assistant Secretary on December 29, 1989.

(e) In accordance with 29 CFR 1956.51(f) the State promulgated regulations for injury/illness recordkeeping, equivalent to 29 CFR part 1904, which were approved by the Assistant Secretary on December 29, 1989.

(f) In accordance with 29 CFR 1956.51(g) the State developed and adopted employee non-discrimination procedures equivalent to 29 CFR part 1977, which were approved by the Assistant Secretary on December 29, 1989.

(g) In accordance with 29 CFR 1956.51(h) the State adopted procedures for the review of contested cases equivalent to 29 CFR part 2200, which were approved by the Assistant Secretary on December 29, 1989.

(h) In accordance with 29 CFR 1956.51(i) the State revised its plan to reflect the procedures dictated by State law that require specific legislative action in the development and adoption of alternative standards as the State's Public Employee Safety and Health Act provides only for the adoption of identical OSHA safety and health standards, which were approved by the Assistant Secretary on December 29, 1989.

(i) In accordance with 29 CFR 1956.51(k) the State has adopted the Federal Industrial Hygiene Manual, including changes one (1) and two (2), through April 7, 1987, which was approved by the Assistant Secretary on December 29, 1989.

(j) In accordance with 29 CFR 1956.51(l) the State issued a directive implementing an on-site consultation program in the public sector which was approved by the Assistant Secretary on December 29, 1989.

[50 FR 21047, May 22, 1985, as amended at 52 FR 20073, May 29, 1987; 55 FR 1206, Jan. 12, 1990]