UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WOMEN OF COLOR FOR EQUAL JUSTICE, et al.

Plaintiffs,

v.

THE CITY OF NEW YORK, MAYOR ERIC L. ADAMS, COMISSIONER ASHWIN VASAN, MD, PHD DEPARTMENT OF HEALTH AND MENTAL HYGIENE, DEPARTMENT OF EDUCATION, AND DOES 1-20

Defendants.

INDEX No.: 1:22 CV 02234-EK-LB

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Jo Saint-George, Esq.
14216 Dunwood Valley Dr.
Bowie MD 20721-1246
jo@woc4equaljustice.org
Phone: 301-447-3600

Donna Este-Green, Esq. Bar#2517688
25 Fairway Dr.
Hempstead, NY 11550

Tricia S. Lindsay, Esq.
531 E. Lincoln Ave., Suite 5B
Mount Vernon, New York 10552

Attorneys for Women of Color for Equal Justice Plaintiffs

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Regulations

United States Supreme Court Cases

Federal Court Cases

I. PRELIMINARY STATEMENT

This case concerns the City of New York's unauthorized and fraudulent issuance of nine (9) emergency Covid-19 vaccine orders (collectively the "Vaccine Orders") (See Exhibits 1-9) by the Commissioner of the New York City Department of Health (collectively "City") that were pre-empted by the OSH Act of 1970 due to the City's failure to obtain an approved variance as required by 29 USC 655 Section 6(d), which prohibited the City's use of the new Covid-19 vaccine as a an "alternative safety method" to the existing OSHA pre-authorized safety methods under the OSH Act Respiratory Standard and General Duty Standard. (See Exhibit 10) Due to the issuance of the Vaccine Orders, all Plaintiffs (and individuals similarly situated, which include City employees and private sector employees within the City (collectively herein after "Employees") have had and continue to have their First Amendment right – free exercise of religion – trampled upon by the City's refusal to grant "automatic religious exemptions" from the Vaccine Orders as required pursuant to 29 USC 669 Section 20(a)(5) of the OSH Act (the "Auto Religious Exemption Clause") and provided by the First Amendment. As a result of the City's illegal issuance of the Vaccine Orders, the Employees have been placed on "Indeterminate Leave without Pay" (ILWOP) for over ten (10) months for exercising their right to object to the unauthorized Vaccine Orders based on religious grounds.

At the heart of this case is the battle over the supremacy of Supreme Court opinions and Congressional authority provided to the Occupational Safety and Health Administration (OSHA) versus States' rights to self-govern. While the Supreme Court in its June 24, 2022 opinion ruled that states have authority to regulate in some areas of women's health (whether right or wrong)[1], nowhere in that opinion or any other Supreme Court ruling has the Supreme Court given states the right to violate established federal law over health and safety issues when Congress and the 50 States have

[1] Dobbs v. Jackson Women's Health Organization, 597 U.S. _____ 2022 WL 2276808; 2022 U.S. LEXIS 3057

already agreed that the OSHA Act shall be the supreme controlling law in order to provide uniform workplace safety standards for all employees.[2] States cannot not sidestep this agreed upon balance of power codified in federal law by fraudulently claiming that it has enacted new state regulations that are "generally applicable" laws exempt from the OSHA standards that mandate state regulators and all private sector employers (collectively "Covered Employers") to first seek authority from the OSHA agency before any Covered Employer seeks to enforce "new" workplace safety methods. 29 USC 655 Section 6(b)(6).

It is urgent, therefore, that this Court issue a TRO and Preliminary order against the City as **soon as possible** after the Labor Day Holiday because the City is currently using its unauthorized police power to continue to coerce and harass the Employees to force them to take the vaccine against their religious practices. Most recently on August 22, 2022 and in late June 2022, the City through its Department of Education and other City agencies have sent harassing letters to the Employees coercing them to take the Covid-19 vaccine by **September 6, 2022** (Exhibit 11), which is against their religious practice of abstaining, in exchange for them getting their job and salary back after the City withheld their compensation for over 10 months and have maliciously prevented them from getting unemployment benefits so they can feed their families. This "quid pro quo" coercion and shady backdoor inappropriate communication to represented Plaintiffs without first speaking to their counsel of record must stop. The City has no authority to demand, let alone make a "quid pro quo" offer to the Employees to take an unauthorized vaccine as a condition of employment in violation of OSHA established standards. Also, the letters fraudulently states that the Employees have been "terminated" when they been put on leave without pay and no disciplinary administrative charges have been made to effectuate a termination. Therefore, a TRO and Preliminary injunction must issued

[2] Note: States have federal representatives in Congress and the OSH Act was passed by a "bipartisan" vote and signed into law by a Republican President for the health and safety of ALL Americans. See All About OSHA - https://www.osha.gov/sites/default/files/publications/all_about_OSHA.pdf - State regulators cannot years later have selective amnesia and pretend that they did NOT agree to the terms of how the balance of power would operate between states and the Federal OSHA agency because state regulators think they are right regarding some "new method" of protecting the health and safety of America.

as soon as possible declaring and ordering that: 1.) the Vaccine Orders are preempted, void and Covered Employers are barred from enforcing them, and 2.) Covered Employers are barred: from preventing Employees from returning to their jobs, from continuing to withhold compensation, from withholding backpay that is past due Employees, and from withholding mandated OSHA safety measures like "remote work" from home and/or respirator (specifically Powered Air Purifying Respirators – PAPR) and ventilation equipment.

Based on careful review of the entire OSH Act, including its rules and regulations enacted since 1970, the Secretary of the Occupational Safety and Health Administration (OSA) has never "authorized" any immunization or communicable disease vaccine as a workplace "safety method." (Exhibit 10) The OSH Act at 29 USC 651 Section 2(b)(3) **only** gives the Secretary of OSHA, and him or her alone, the supreme authority to "set mandatory occupational safety and health standards" and to approve of "new" standards or "methods" for workplace safety that ALL state regulators must respect and protect based on the original bipartisan agreement between the 50 states and Congress when the Act was passed. (Exhibit 13 -All About OSHA) The Secretary has "broad authority ... to promulgate different kinds of standards" for health and safety in the **workplace**.[3] However, that broad authority does not include the authority to prescribe medical treatments, which the Covid-19 vaccine is a "medical treatment" and not a environmental safety method (Exhibit 10 and ECF Doc #17-4, Page 4, ¶18). According to New York Education Law §6521-6522 only authorized medical professionals can "prescribe" medical treatment to a person and it is a felony to prescribe or require a medical treatment to anyone without a license. (Exhibit 22)

If any Covered Employer desires to create and enforce a "new" workplace safety standard or method, like the Covid-19 vaccine, the OSH Act has a process called a "variance," which is the only

[3] See *Indus. Union Dep't, AFL-CIO v. Am. Petroleum Inst*., 448 U.S. 607, 611, 100 S.Ct. 2844, 65 L.Ed.2d 1010 (1980) (plurality opinion); see, e.g., *N. Am.'s Bldg. Trades Unions v. Occupational Safety & Health Admin*., 878 F.3d 271, 281 (D.C. Cir. 2017); *United Steelworkers of Am., AFL-CIO-CLC v. Marshall*, 647 F.2d 1189, 1202, 1311 (D.C. Cir. 1980); 29 C.F.R. §1910.141, §1926.51.

statutory process in the Act that allows employers to request and submit a written proposal to the OSHA Secretary to evaluate the new method for its efficacy based on a well-defined criterion clearly spelled out in the OSH Act at 29 USC 655. The variance process, in summary, mandates employers to submit evidence that establishes by a preponderance of the evidence that a proposed "new method" provides workplace protections that are at least "equal to, or greater than" the protection provided by complying with the existing OSH Act standard safety methods, which in this case is the Respiratory Standards and the General Duty Standard. Those existing standards require employers to either allow employees to work remotely from home (if the job can be done remote) or to provide employees with N95 or Powered Air Purifying Respirators (PAPR) to prevent employee exposure to airborne hazards, like the Covid-19 virus, in the workplace atmosphere. (ECF Doc. #17-5, P.9,¶34-37)

Because the City refused to follow this supreme law of the land and has issued the unauthorized Vaccine Orders, all the Vaccine Orders must be declared preempted, void and the City barred from enforcing them.

Not only does the OSH Act control what "safety methods" are authorized for workplace safety, the OSH Act also protects employees' First Amendment right (based on a strict scrutiny standard) to object to any "immunization" based on religious grounds pursuant to OSH Act 29 USC 669 Section 20(a)(5) (herein referenced as the "Automatic Religious Exemption Protection Clause" or "Auto Exemption Clause").

The Auto Exemption Clause requires all employers to automatically grant all employee requests for a religious exemption (without employer review and approval) from any immunization or vaccine without need for an employee to provide a detailed explanation of their religious practice. The Auto Exemption Clause does not require the employee to prove they have a "sincerely held religious belief." The Auto Exemption Clause does not contain a "sincerely held belief" provision, which if it did, it would allow employers to become a "religious police" who doles out safety

equipment based on whether an employee agrees with the employer's belief system about workplace safety. The Auto Exemption Clause is written such that if any employer seeks to mandate employees to get any vaccine as a condition of employment or hire, then the Auto Exemption Clause is triggered providing an employee the automatic right to object and receive an exemption from the vaccine requirement.

While the Auto Exemption Clause does provide employers one exception to the rule, the exception contains a "strict scrutiny standard" that requires the employer to first apply for a variance to establish that the "vaccine alternative method" is "necessary" for the protection of others. The OSH Act has long established safety methods that have always controlled all communicable respiratory diseases under the Respiratory and General Duty Standard that has kept American employees safe for decades, including through the 2009 H1N1 Global Pandemic without the Secretary having to approve of any "new vaccine method" for prior pandemics. The fact is that no vaccine can meet the "strict scrutiny necessary" standard in the OSH Act because vaccines can never remove hazardous airborne communicable viruses from the atmosphere of a workplace and no vaccine can provide a "physical shield" over employees to prevent an employee's exposure to any airborne communicable virus in the workplace atmosphere, which is the current OSHA Respiratory standard requirement. (Ex. 12, & ECF Doc. #17-5, Page 4, ¶18) The City cannot run rip shod over Employees right to exercise their religious practice of abstaining from vaccines, which is a fundamental right protected by the OSHA protection process.

The fact that the City has not obtained a variance (not even an "emergency variance")[4] (Exhibit 15, List of Variances) is uncontroverted evidence that Plaintiffs are likely to succeed on the merits of their preemption claims and First Amendment damages claims. Other factors also weigh

[4] While the FDA granted "Emergency use" authorization for the Covid-19 vaccine as an authorized "medical treatment" that medical professionals are authorized to administer pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act (FD&C Act), the FDA does not have authority to authorize an OSHA "emergency variance" for an employer to use the Covid-19 as an authorized workplace safety "method". OSHA has not granted a "emergency variance" for the new Covid-19 vaccine method.

heavily in favor of granting emergency relief here. It is beyond dispute that "[t]he loss of First Amendment freedoms expressly protected by the OSH Act, for even minimal periods of time, unquestionably constitutes **irreparable injury**." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) See *Roman Catholic Diocese of Brooklyn Cuomo*, 592 U.S. ____ (2020). The U.S. Supreme Court recently held in 2021 that a New York City Covid-19 lock down law that would have shut out Catholic and Orthodox Jewish members from their churches and synagogues for just "minimal periods" constituted irreparable injury. That opinion establishes that the Employees have been and continue to be irreparably harmed by the City's continued "lock out" of the Employees from their jobs, withholding compensation from the Employees for almost a year and by the City's continually sending harassing letters to Employees more than constitutes irreparable injury. (Exhibit 11)

Furthermore, it is in the public interest to issue the TRO and preliminary injunction against the City to maintain the integrity of the OSH Act as the supreme law of the land and to prevent all other employers in the U.S. from also ignoring their OSHA duties and trampling on the free exercise rights of employees.

II. FACTUAL & PROCEDURAL BACKGROUND

A. Procedural Background

1. On March 11, 2020, the World Health Organization declared the disease Covid-19 a Global Pandemic. (Exhibit 16)
2. According to the CDC the principal mode by which people are infected with the virus SARS-CoV-2,v which is the virus that causes Covid-19, is through exposure to respiratory fluids carrying infectious virus and that exposure occurs in three principal ways: (1) inhalation of very fine respiratory droplets and aerosol particles (e.g., quiet breathing, speaking, singing, exercise, coughing, sneezing) in the form of droplets across a spectrum of sizes, (2) deposition of respiratory droplets and particles on exposed mucous membranes in the mouth, nose, or eye by direct splashes and sprays, and (3) touching mucous membranes with hands that have been

soiled either directly by virus-containing respiratory fluids or indirectly by touching surfaces with virus on them. (18)

3. Section 225 of the New York Public Health Law confers on the New York State Department of Health Commissioner ("Commissioner") and the New York State Public Health and Health Planning Council (PHHPC) the power to amend New York Department of Health ("DOH") regulations in order to "deal with any matters affecting the security of life and health or the preservation and improvement of public health in the State of New York" and to "designate the communicable diseases which are dangerous to the public health." PHL § 225(4) & (5)(a),(h). (Exhibit 20)

4. The New York Public Health law, in summary, however, only authorizes the Commissioner of the Departments of Health, to provide "access" to medical treatments like vaccines to track and trace disease and to quarantine in the event of communicable outbreaks. Id.

5. The New York Public Health Law §206 expressly prohibits Department of Health Commissioners from mandating immunization of adults, wherein it states:

> "**Nothing in this paragraph shall authorize mandatory immunization of adults** or children, except as provided in Section 2164. (Section 2164 only deals with school children immunization for public schools) Id.

6. The New York Public Health Law is consistent with the Occupational Safety and Health Act (OSH Act) of 1970 OSHA Public Law 91-596, 29 USC 669 §20(a)(5), which states as follows:

> "**Nothing in** this or any other provision of **this Act shall** be deemed **to authorize or require medical** examination, **immunization,** or treatment **for those who object thereto on religious grounds**, except where such is necessary for the protection of the health or safety of others." (Exhibit 10)

7. The OSH Act of 1970 regulates the safety of all private workplaces in the United States and all state and local workplaces in states that have a State Plan (herein after "Covered Employers"). (Exhibit 10)

8. The OSHA Secretary is responsible for creating occupational safety and health standards for workplaces, which standards include "conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment and places of employment" for Covered Employers. OSH Act 1970 Public Law 91-596, 29 USC 652 §3(3) and §6(a) (Exhibit 10)

9. Under the OSH Act General Duty Clause at 29 USC 654 §5(a)(2), all Covered Employers subject to the Act "shall comply with the occupational safety and health standards promulgated under [the] Act." (Exhibit 10)

10. In the "All About OSHA" Publication, OSHA declared that duty for employers to provide employees a safe workplace and to comply with OSHA standards as "Human Rights" of employees. (Exhibit 13)

11. Under the General Duty Clause of the OSH Act, Employers have the duty to protect employees under OSHA that cannot be delegated, and employers have a duty to train employees about all OSHA standards that protect employee safety. (ECF Doc. #22 Affidavit of Bruce Miller, Expert Hygienist)

12. If an employer is unable to comply with a standard, employers are required to obtain a temporary variance from a standard until the employer can comply or an employer can obtain a permanent variance pursuant to 29 USC 655 §6, which relevant subsections state as follows:

> (b)(6)(A) Any employer may apply to the Secretary for a **temporary order** granting a variance from a standard or any provision thereof promulgated under this section. Such **temporary order shall be granted only if the employer files an application** which meets the requirements of clause (B) and establishes that….. (Emphasis added) (Exhibit 10)

13. If an employer seeks to change or desires to use an alternative safety method from the existing standard condition, practice, means, method, operation, or process, the employer must first apply and obtain approval from OSHA for a permanent or emergency variance before

utilizing a new alternative standard in the workplace, Section 6(d)-(g) (Exhibit 10) which states as follows:

> (d) Any affected employer may apply to the Secretary for a rule or order **for a variance from a standard promulgated under this section**. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that **the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard**.

14. OSHA keeps track of all the variance submissions in a public tracking database that lists variances it has reviewed, approved, rejected and temporary variances granted since 1995 until 2022. (Exhibit 15 - OSHA Variance Reports)

15. Nowhere in the OSHA Variance Tracking Reports is there a reference to the City submitting a request for a variance. Id.

16. For over two decades, OSHA has had health and safety standards that cover all infectious diseases, specifically infectious diseases that are transmitted through airborne droplets or vapors like measles virus or TB, which said standards include the General Respiratory Standard at 29 CFR §1910.132, the Personal Protective Equipment standard at 29 CFR §1910.132, the Respiratory Protection standard at 29 CFR §1910.134 and the General duty Clause of the OSH Act. (Exhibit 12)

17. In 2009, the World Health Organization declared H1N1 a "global pandemic" and OSHA did not grant any variances to the Respiratory Standards to cover that pandemic, and OSHA did not issue any vaccine Emergency Temporary Standards specific to the H1N1 global pandemic. (WHO video at https://www.youtube.com/watch?v=10Nfk0zcTAk and Exhibit 17)

18. In 2015, OSHA Published, along with the CDC and NIOSHA the Hospital Respiratory Protection Program Toolkit (which applies to any employer), which outlines the effectiveness of various "respirators" that are required under the OSHA Respiratory regulations, and the

publication notes that Powered Air Purifying Respirators (PAPR[5]) and/or N95 Respirator are the best of all respirators for shielding Employees from hazardous airborne viruses, like Covid 19, because both respirators provide 99.97% effectiveness in shielding employees from exposure to any airborne hazard in any workplace atmosphere. (Exhibit 19, NIOSHA Hospital Respirator Tool Kit and ECF Doc. # 17-5, P.11, ¶43, Affidavit of Bruce Miller, Hygienist)

19. OSHA Respiratory regulations also mandates employers to provide "remote work from home" as a safety method to prevent employee exposure to viral airborne hazards in the workplace, when an employer cannot remove an airborne viral hazard from the atmosphere in a workplace. Id.

20. Expert Healthcare Physician responsible for OSHA compliance, Dr. Baxter Montgomery, states that "vaccines are a medical treatment" and are not a safety method that shields workers from any airborne virus and the vaccine cannot remove any hazardous airborne virus from the workplace atmosphere, which all OSHA respiratory safety methods must provide to become a regulated standard as outlined in the regulations in 29 CFR §1910.134. (Exhibit 11 and ECF Doc. #17-4, P.4, ¶18), Affidavit of Dr. Baxter Montgomery)

21. The only OSHA standard that references vaccines is Bloodborne pathogen regulation that provides a "process" for "Hepatitis B" vaccines; but that standard only requires employers to "make available" the hepatitis B vaccine to employees who have an occupation exposure to the Hep B virus and to document an employee's "declination" of the vaccine and sign a statement. (Exhibit 12 - 29 CFR §1910.1030(f)(1) Bloodborne pathogens OSHA regulation.

22. Each of the 50 states in the U.S. have laws that only permit designated medical professionals to "prescribe" medical treatments, like the Covid-19 vaccine, and specifically in the State of New York the New York Education Law §6521-6522 it is a class "E" felony to prescribe

[5] The PAPR does not require the extensive OSHA medical approval and extensive fit testing "process" required under the OSHA Respiratory standard to utilize.

(require) medical treatment to any human person, including requiring a vaccine, when a person is "unauthorized" to practice medicine in the New York. (Exhibit 22)

23. During the 2020 Covid Pandemic, OSHA published guidelines specific to K-12 schools and staff and the guide states on Page 5 that the schools must follow the OSHA Respiratory Standards, which requires public schools to provide teachers with respirators like the PAPR and/or remote work. (Exhibit 24)

24. States are authorized under the OSH Act to assert jurisdiction to regulate or create new standards over any occupational safety or health issue for which OSHA has not created a standard or any state can assume responsibility for enforcement of existing standards so long as the State obtains an OSHA approved State Plan and the plan applies to state and local government employees. (Exhibit 10 - OSH Act 29 USC 667 §18(b))

25. The New York State Department of Labor through its New York Public Employee Safety and Health (PESH) Bureau submitted to OSHA the New York State Plan that was initially approved June 1, 1984, but not certified until August 16, 2006. (Exhibit 25)

26. The New York State Pla1 adopted and codified certain parts of OSHA standards in Title 29 of the Code of Federal Regulations which gives the New York PESH/NYDOL authority to create state regulations over General Industry Standards, Shipyard Employment Standards, Marine Terminals Standards, Longshoring Standards, Construction Standards, and Agricultural Standards and all other OSHA standards are regulated by OSHA. (Exhibit 21 N.Y. Comp Codes 12 §800.3.)

27. The OSHA New York State Plan does not cover Respirator Standards or Infectious Disease Standards; and therefore, all New York employers including municipal employers are required to comply with the OSHA standards. (Exhibit 25, New York State Plan)

28. The City DOH vaccination laws mirror the OSHA Infectious Disease Standard, which is demonstrated in the NY City Administrative Code §17-109, which empowers the NY City

DOH to provide the general public with "access" and "availability" to vaccines as is stated as follows (Exhibit 21):

> Immunizations against poliomyelitis, mumps, measles, diphtheria and rubella…(a) It shall be the **duty of the administrative officer…….. to make available such immunizations** and a certificate or certificates of such immunizations……(c) Each general hospital shall adopt influenza and pneumococcal immunization policy which shall include**……..procedures for the offering of immunization**…. and a **system for documenting administration….. patient refusals and any post-vaccination adverse events**. New York PHL §2805 -h.

29. New York State specifically adopted the OSHA Respirator Standards in 2015 and issued a Directive for to the Department of Corrections on May 18, 2021, which references the OSHA 29 CFR §1910.134 Respiratory Standard. (Exhibit 26, NYSDOC Respiratory Directive)

30. Approximately one (1) month after the Covid-19 Pandemic was declared around March 2020, the Ford Motor Company announced on April 13, 2020, that it was increasing the manufacture of Powered Air Purifying Respirators (PAPRs) and N95 Respirators compliant with the OSH Respiratory Standard. (Exhibit 27, Ford Press Release)

31. On March 27, 2020, the Federal Government passed the CARES Act for state and city Covid-19 relief fund and issued over $1.4 Billion to the City of New York for Covid-19 expenses, and the CDC especially provided an additional $25.1 million to the City specifically to assist the City with compliance with OSHA Respiratory standards, including PPE/Respiratory standards. (Exhibit 28, Report New York City Independent Budget Office)

32. On May 29, 2020, the Office of the Solicitor for OSHA and the Department of Labor issued a Response to an Emergency Petition For A Writ of Mandamus in the U.S. Court of Appeals for the District of Columbia Circuit, declaring, in summary, that it was not "necessary" for OSHA to issue any Covid-19 related Emergency Temporary Standards (ETS), specifically because the existing Infectious Disease standards where sufficient for employers to comply with in order to manage the Covid-19 pandemic. (Exhibit 29 – OSHA Solicitor Response)

33. OSHA did issue the Healthcare ETS in June 2021, and an ETS for private employers in November 2021 (which the Supreme Court struck down in January 2022); but neither ETS "authorized" the Covid-19 vaccine as an "alternative safety method" and the ETS did not mandate employee vaccine leaving the existing Infectious Disease employer mandates in place. (Exhibits 30 – June 2021 ETS)

B. Factual Background for Employees First Amendment Violation Claim

34. Between July 21, 2021 and December 13, 2002, the New York City Department of Health Commissioner issued emergency Covid-19 orders (collectively the Vaccine Orders), the first of which mandated staff in City healthcare clinics to provide proof of Covid-19 vaccination and then the August 24, 2022 order mandated employees for the City Department of Education to provide proof of Covid-19 vaccination and then on September 9, 2021 a Vaccine Order was issued mandating ALL City Employees to provide proof of Covid-19 vaccination and the last Vaccine Order dated December 13, 2021 applied to employees working for private employers within the City. (Exhibits 1-9, Vaccine Orders)

35. The first four (4) of the eight Vaccine Orders did not contain language that recognized the right of any employee to object to comply with the Vaccine Orders. Id.

36. Any covered Employees who desired to be exempted from the Vaccine Orders was required to first submit to the City through an electronic portal a religious exemption request that required them to disclose their religious affiliation or church membership, provide a detailed explanation of their religious practices and/or beliefs, and the City required a letter from a clergy before their request would be considered by the City for an exemption. (ECF Doc. #17-6 – Affidavit of Remo Dello Ioio)

37. All Employees who worked for the City Department of Education that requested exemptions from the Vaccine Orders on religious grounds were denied the exemption around October 1, 2021. (ECF Doc. #s17-6 thru 18)

38. City Employees who worked for other City Departments that requested exemptions from the Vaccine Order on religious grounds had their exemption from the Vaccine Orders on religious grounds denied around January/February 2022. (ECF Doc. #17-6 thru 18- Affidavits of Employees)

39. The City granted several appeals from the denials and many of the Employees submitted three and four appeals for reconsideration and all Employee appeals were denied by the City around February 2022. (ECF Doc. #17-6 thru 18- Generally)

40. After the City issued its eighth and final Vaccine Order on December 13, 2022, on December 20, 2021 the New York City Law Department Office of the Corporate Counsel issued a legal memorandum titled "Guidance on Accommodations for Workers" (notwithstanding that the letter states it is not "legal advice), wherein the City Corporate Counsel instructed employers that they could deny requests for religious exemptions from the Vaccine Orders based on the EEOC "undue burden" standard and the letter included a checklist of factors to evaluate to determine if an employee requests an exemption on religious grounds is "sincerely held". (Exhibit 14, City Corporate Counsel Guidance Letter)

41. At no time between July 21, 2021, and December 13, 2021, did the City inform, give notice or publish any directive or legal memorandum for City Employees or private employers regarding the OSHA safety requirements or regarding mandatory remote work nor did the City provide PAPR's to employees who choose to remain unvaccinated on religious grounds. Id.

42. The City refused to allow "remote work" for Employees who were already working "remote" either as teachers for the DOE or in administrative jobs for other City agencies and the City took away their right to continue to work remote pursuant to the OSHA regulations. (ECF Doc. # 17-12- Affidavit of Amoura Bryan, ECF Doc. #17-6) Affidavit - Remo Dello Ioio)

43. After the City denied all Employees' request for exemption from the Vaccine Orders based on religious grounds, all Employees were locked out their jobs instructed not to return to any City building and they were placed on indefinite leave without pay (ILWOP) since October 2, 2021, or since around January 2021. (ECF Doc. #s 17-6 thru 18)

44. Many Employees received letters stating that they were "terminated", when in fact none of the City Employees have been terminated. (ECF Doc. #s – See All Employee Affidavits)

45. None of the Employees ever received a formal "Charge" of "misconduct" required to be filed with the City's Administrative Law Department declaring that any of the Employee committed any act of misconduct for termination in violation of either New York City Education Law §3020, which applies to all tenured teachers, or violation of the New York City Administrative Code §16-101 for Sanitation employees; of the New York City Civil Service Law §75, which applies to all City employees. (Exhibit 23)

46. According to the City's former Mayor DeBlasio in a New York Times report, approximately 12,000, or less than 5% of all City employees requested exemptions from the Covid-19 Vaccine Orders based on religious grounds. (Exhibit 31 - Nov. 1, 2021, NY Times Article)

47. Now Employees are receiving harassing and coercive letters from the City wherein the City is trying to coerce the Employees to take the Covid-19 by September 6, 2022 in exchange for the City permitting Employees to return to their jobs to receive compensation and benefits. (Exhibit 11 -Coercive Letters from City)

III. LEGAL STANDARD

In the Second Circuit, the same legal standard governs the issuance of preliminary injunctions and TROs. *3M Co. v. Performance Supply, LLC*, --- F. Supp. 3d ---, 2020 WL 2115070, at *7 (S.D.N.Y. May 4, 2020). Specifically, a Court may grant preliminary and/or emergency injunctive relief if the plaintiff demonstrates irreparable harm and shows either (a) a likelihood of success on the

merits, or (b) sufficiently serious questions going to the merits and a balance of hardships tipping decidedly in the plaintiff's favor. *Jolly v. Coughlin*, 76 F.3d 468, 473 (2d Cir. 1996). Courts also consider whether the public interest favors an injunction. Id.

When the government is the defendant, the "balance of hardships" and "public interest" factors "merge." 725 *Eatery Corp. v. City of New York*, 408 F. Supp. 3d 424, 469 (S.D.N.Y. 2019). A likelihood of success requires a greater than fifty percent probability of success, whereas the "serious questions" standard applies where the Court "cannot determine with certainty that the moving party is more likely than not to prevail . . . , but where the costs outweigh the benefits of not granting the injunction." *Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd*., 598 F.3d 30, 34–35 (2d Cir. 2010).

IV. ARGUMENT

A. Plaintiffs Will Succeed on the Merits of Their Pre-Emption Claims

1. The Vaccine Orders are Expressly Preempted

OSHA is charged with ensuring worker safety and health "by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems." Id. § 651(b)(5). According to the OSHA agency, employee's right to be provided safety measures and equipment and the right to work in a safe workplace are "human rights". (Exhibit 13)

Congress specifically authorized the Secretary of Labor (the Secretary) "to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce." (Exhibit 10) Id. §651(b)(3). Indus. *Union Dep't, AFL-CIO v. Am. Petroleum Inst*., 448 U.S. 607, 611, 100 S.Ct. 2844, 65 L.Ed.2d 1010 (1980) (plurality opinion); see, e.g., *N. Am.'s Bldg. Trades Unions v. Occupational Safety & Health Admin*., 878 F.3d 271, 281 (D.C. Cir. 2017); *United Steelworkers of Am., AFL-CIO-CLC v. Marshall*, 647 F.2d 1189, 1202, 1311 (D.C. Cir. 1980); 29 C.F.R. §1910.141, §1926.51.

An occupational safety and health standard is one that "requires conditions, or the adoption or use of one or more practices, means, **methods**, operations, or processes, reasonably **necessary** or appropriate to provide safe or healthful employment and places of employment." 29 U.S.C. §652(8) (Emphasis added). To specifically address infectious communicable diseases of any severity that are spread through airborne transmission of very small particles or droplet nuclei that contain infectious agents that can remain suspended in air for extended periods of time, OSHA years ago established several OSHA standards and directives to protect workers against transmission of infectious agents, including Covid-19, TB, SARS. These standards include OSHA's Personal Protective Equipment standard 29 CFR §1910.132, the Respiratory Protection standard 29 CFR §1910.134 which mandates employer provide employee respirators, like the Powered Air Purifying Respirators (PAPR); along with the OSHA General Duty Clause, which mandates employers to eliminate any known workplace hazard. (Exhibit 12)

These standards have not changed despite the number of global pandemics involving hazardous respiratory agents, including the 2009 H1N1 Pandemic[6], and other infectious diseases for which OSHA has established directives, including SARS, MRSA, Zika, Pandemic Influenza, Measles, and Ebola. (Exhibit 17 & Exhibit 12) The supply of respirators at the beginning of the Covid-19 Pandemic was increased to meet the demand by the Ford Motor Company who increased manufacture of PAPRs and other safety equipment. (Exhibit 27)

The universal primary objective of the OSHA Respiratory standard is to implement “practices, means, methods, operations, or processes” that either prevent or eliminate hazardous atmospheric contamination in the workplace and/or to prevent employee exposure to airborne contaminates in the workplace atmosphere. (29 CFR 1910.132 (Exhibit 12). Consequently, employers have a non-delegable duty to take “immediate action to eliminate employee exposure to an imminent danger

[6] 2009 World Health Organization declared the H1N1 virus a global pandemic – see video declaring the H1N1 Global Pandemic https://www.youtube.com/watch?v=10Nfk0zcTAk&t=33s

identified" in the workplace atmosphere, when dealing with airborne contaminants. See 29 USC 670 §21(d)(3), Pub.. L 105-97, §2 See *Doca v. Marina Mercante Nicaraguense, S.A*., 634 F.2d 30, 1980 AMC 2401 (2nd Cir. 1980) (held that OSHA regulatory standards created a non-delegable duty to remove a known hazard.) According to the CDC, the virus that causes Covid-19 is an airborne hazardous viral infection that is transmitted in airborne sprays or droplets from person to person in all environments. (Exhibit 18)

Vaccines of any type have never been an OSHA approved "method" for eliminating airborne contaminates from the workplace atmosphere. Vaccines are a "medical treatment" that effect the human immune system and are incapable of removing airborne contaminates from the air and are incapable of shielding employees from exposure to airborne contaminants in the workplace atmosphere. (ECF Doc. #17-4 & 5). By definition, vaccines can never meet the universal primary objective of the OSH Act because medical treatments effect the human immune system and do not remove airborne hazards from the workplace atmosphere nor prevent employee exposure to airborne atmospheric hazards of any kind in the atmosphere of the workplace. The OSH Act does not authorize the Secretary or employers regulated by the Act to prescribe medical treatments to eliminate workplace hazards. The prescribing of medical treatments is exclusively reserved to physicians licensed in the 50 states and it is a felony in New York for any unauthorized person to prescribe a "medical treatment". 29 USC §651(b) – Powers of the Secretary of Labor) (Exhibit 10)

Based on the above background, the controlling case in this matter is the U.S. Supreme Court decision in the *Gade v. National Solid Wastes Management Assn*., 505 U.S. 88 (1992), which held that "when a state law directly and substantially regulates workplace safety or health issue with respect to which a federal standard has been established, then the state law or regulation is preempted" and declared unconstitutionally void. The *Gade* Court found that express preemption exists in the OSH Act at 29 USC 667 §18(b) when a state fails to meet the procedural pre-requisite in that section to avoid federal OSHA preemption, as stated below:

> "a State "shall" submit a plan if it wishes to assume responsibility for developing and enforcing health and safety standards."

The Supreme Court specifically held in *Gade* that the "statute is clear…[t]he most reasonable inference from this language is that when a State does not submit and secure approval of a state plan, it may not enforce occupational safety and health standards in that area….. the structure and language of §18 leave little doubt that in the OSHA statute Congress intended to pre-empt supplementary statute regulations of an occupational safety and health issue with respect to which a federal standard exists." Id at 112-113.

Although New York State has a State Plan applicable to state and municipal[7] employers and employees, the plan does not include an approved plan for infectious disease or respiratory standards. The New York Department of Labor expressly adopted OSHA Covid-19 ETS of June 2021, which among other things, only encourages vaccination, but does not mandate employees to be vaccinated. (Exhibit 25)

Covered Employers are also required to seek a "variance" from an OSHA existing standard method for infectious disease in order to utilize an "alternative safety method" like the Covid-19 vaccine, rather than exclusively utilizing the OSHA authorized safety method pursuant to 29 USC 655 §6(b), (See Exhibit 10) The OSHA "variance Program" mandate is to ensure that employers' alternative proposed methods are effective in providing workers the protection that is equal to or more effective than the standard from which employers are seeking a variance. (Exhibit 10) According to the OSHA Variance Program records maintained on its website, the City has never applied for any type of variance from the Respiratory Standard in order to utilize the "alternative Covid-19 vaccine method" as a safety measure for City employees. (Exhibit 15) Because the City does not have an approved State Plan through which the City assumed responsibility for the development and enforcement of Infectious Disease standards and the City did not apply for a

[7] See OSHA approved New York State Plan https://www.osha.gov/stateplans/ny and New York Department of Labor Safety and Health Laws - https://dol.ny.gov/public-employee-safety-health

variance to utilize the alternative Covid-19 vaccine safety method, the City's Vaccine Orders are expressly preempted by the OSH Act and are void.

2. The NYC Vax Orders Are Not Saved As Laws of General Applicability

While state laws that directly regulate worker health and safety are expressly preempted in the absence of approval of the Secretary, the *Gade* decision also held that a state's safety law can be saved from preemption, if the law: 1) is "generally applicable" issued under a state's general police power, and 2) does not conflict with OSHA standards. Id. at 109. The NYC Vaxx Orders, however, are not regulations of general applicability.

The U.S. Supreme Court defined laws of general applicability, in the context of "health and safety" standards generally governed by OSHA standards, as laws that "regulate workers simply as members of the general public…" Examples of laws of general applicability are "traffic safety or fire safety," "taxi, bridges or tunnel regulations or criminal laws that "regulate the conduct of workers and nonworkers alike" or regulate workers in non-workplaces to protect the public. Id. 107, See also *Steel Institute of New York v. City of New York*, 716 F.3d 31,38 (2nd Cir. 2013) (held New York law regulating construction cranes outside the workplace as generally applicable to the safety of the general public.) See also *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 883-90 (1990)[8]

Also, "a law is not generally applicable if it has a system of individualized and discretionary exemptions that allow the government to consider, and grant an exemption based on, a person's particular reasons and circumstances for deviating from the law." See *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021) and *Hashmi v. City of Jersey City*, Civil Action 19-18884 (ES) (MAH) (D.N.J. Sep. 7, 2021). In this case, the City's Memorandum from its Corporate Law Department proves that Vaccine Orders are not generally applicable because the memo instructed employers to

[8] Held in summary that a neutral criminal law that penalizes any person who ingests or smokes Peyote, defined as an illegal controlled substance is a law of general applicability

deny religious exemption requests by applying the EEOC Title VII religious exemption standard that takes into consideration the "sincerity" of employees' religious exemption request, which is not authorize under the OSHA Auto Religious Exemption.

Moreover, the City's Vaccine Orders are not laws of general applicability because they do not apply to all City residents like the unemployed, retired, disabled, or children and in no way regulates the conduct of nonworkers the same as workers.

Finally, Vaccine Orders in this case are in no way similar to the City's generally applicable measle vaccine regulation issued on April 17, 2019. See *C.F. v. N.Y.C. Dept of Health & Mental Hygiene*, 191 A.D.3d 52 (N.Y. App. Div. 2020). The New York State Court of Appeals, in the *C.F.* case found that the City's measle regulation was generally applicable because it applied to ALL residents over the age of six months and it allowed anyone to "opt-out" of the mandate by paying a fine, among other exemptions, and the regulation did not declare "unvaccinated people to be a public nuisance". Id at 56-57. While the New York Court of Appeals did not address the issue of whether the fines were unconstitutionally excessive, the fact that the regulation had an "automatic opt-out" fine, irrespective of its excessiveness, was dispositive in the New York Court of Appeals determination that the regulation was generally applicable. Also, residents were not required to make a request to the City and the City had no discretion to deny the "automatic opt-out fine".

The Vaccine Orders in this case do not contain any "automatic opt-out" fine that any City or private industry employee could pay to be automatically exempted from the requirement to provide proof of vaccination. Furthermore, the City Vaccine Orders requires employees to request a "reasonable accommodation" to be exempted from the Orders, which make employers the "Religious Police" who has the power to refuse any accommodation that the employer does not believe is "reasonable" without reference to OSH Act mandates to provide safety equipment. The Vaccine Orders state as follows:

"Nothing in this Order shall be construed to prohibit any reasonable accommodation

otherwise required by law." See October 21, 2021 Order (Exhibit 6)

Finally, the Vaccine Orders are not part of the City DOH Commissioner's general exercise of its powers because the New York State Public Health Law §206 expressly prohibits DOH Commissioners from issuing regulations that mandate adult vaccination. You cannot get any plainer.

B. Employees Will Prevail On Their First Amendment Claims Because The OSH Act Guarantees Employees Automatic Exemptions From Any Vaccination Based on Religious Grounds Under a "Strict Scrutiny Standard"

Generally, a law burdening religious conduct or religious practices, like abstaining from a vaccine on religious ground, that "is **not** both neutral and generally applicable . . . is subject to strict scrutiny." *Employment Division, et al. v. Smith*, 494 U.S. 872, 879 (1990). Moreover, the OSH Act explicitly protects employees' right to object to employer vaccine programs based on religious grounds and only allows one very limited exception based on a "strict scrutiny" standard of "necessity" as defined in the OSHA existing variance standards. Finally, the New York Eastern District Court in *Hamilton v. City of New York*, 563 F. Supp. 3d 43, 49 (E.D.N.Y. 2021) has already held that OSHA regulations are binding on the City and that "neither the ADA nor Title VII can be used to require employers to depart from binding federal regulations,[9]" specifically the OSHA Respiratory Standards for firefighters. Therefore, this Court must interpret the strict scrutiny provision in the OSHA Automatic Religious Exemption Clause limited exception in the context of the existing OSHA variance requirements for "alternative vaccine safety methods", which the City has not met.

Since its enactment in 1970, the OSH Act has include the "Automatic Religious Exemption Protection Clause" (herein after the "Auto Religious Exemption") at 20 USC 669 20(a)(5), which has

[9] While the *Hamilton v. City o New York* (E.D.N.Y. 2021) involved compliance with respirator standards, the case did not involve the City instituting and enforcing an unauthorized "alternative vaccine method" for which the City did not obtain a waiver. The Hamilton case establishes that the City is fully aware of the OSHA requirements and have deliberately refused to comply with the OSHA standards to rob Employees of their OSHA protected automatic religious exemptions.

protected employees' right to object to any employer sponsored immunization/vaccine program based on religion grounds as outlined below:

> **Nothing in this or any other provision of this Act shall be deemed to authorize or require medical examination, immunization**, or treatment for those who object thereto on religious grounds, **except where such is necessary** for the protection of the health or safety of others. (Emphasis added)

It is axiomatic, that the court's role in interpreting statutory clauses like the above "is to give the statute a "fair reading." See *Ga. Ass'n of Latino Elected Officials v. Gwinnett Cnty. Bd. of Registration & Elections,* 35 F.4th, 1108, 1121 (11th Cir. 2022) citing Antonin Scalia & Bryan A. Garner, Reading Law 3 (2012). The 11th Circuit in *Ga. Ass'n of Latino Elected Officials* held that

> "[i]n ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, **as well as the language and design of the statute as a whole**."

Based on a plain reading of Auto Exemption Clause, the aim of the clause is to protect employee's First Amendment rights by: 1.) providing an undeniable "automatic" exemption right to object to any immunization required by an employer, and 2.) placing no preconditions or prerequisites on an employee's right to object and receive the exemption and necessitated safety measures as a result of the exemption.

While the Auto Religious Exemption contains a limit on an employee's right to object on religious grounds – except when "necessary" – this Court must read that limitation as a "strict scrutiny" exception wherein that provision is interpreted in context with the OSH Act variance mandate, which requires an employer to first establish that the "vaccine alternative method" is "necessary" for the protection of the health and safety of others by first proving that the "alternative method" is better than complying with the existing OSHA standard safety methods based on the Variance Program outlined in 29 USC 655 §6(a)(6) & (d). (Exhibit 10) Because the Auto Religious Exemption Clause plainly states that it applies to Section 20 and the entire OSHA Act as indicated by the phrase: "**Nothing in this or any other provision of this Act…,"** this Court must determine that the only "fair meaning" for the "necessary" limitation requirement is to interpret the clause as

requiring an employer to obtain a variance before an "alternative vaccine method" can be deemed "necessary" under the OSHA strict scrutiny standard. In this case, the City did not obtain a variance and refused to grant exemptions; therefore, the City's enforcement of the Orders violated all Employees' religious liberty rights. Based on the foregoing, the Employees have more than a 50% likelihood of prevailing on their Free Exercise claims.

V. PLAINTIFFS HAVE BEEN IRREPARABLY HARMED BASED ON THE U.S. SUPREME COURT HOLDINGS

The U.S. Supreme Court has already held in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U. S. ____ (2020) that the "loss of First Amendment freedoms for even minimal periods of time, unquestionably constitutes irreparable injury." citing *Elrod v. Burns*, 427 U. S. 347, 373 (1976) Therefore, the City's denial of all Employees their right to the OSHA Auto Religious Exemption unquestionably constitutes irreparable injury, especially for those Employees who had their exemption request denied several times and when their paychecks were withheld for over a month after being put on ILWOP and unemployment benefits were also denied and they could not feed their family so they broke down and took the Covid-19 vaccine to feed their families and keep a roof over their heads.(ECF Doc. #17-18, P.4) There is no amount of money that can ever repair the psychological and spiritual damage done to Employees who must carry the guilt and shame of going against their sacred religious practice. The *Cuomo* opinion is the supreme law of the land that must be followed by this Court.

Lastly, Plaintiffs will prevail on their "religious coercion and harassment damages claims because the Supreme Court made clear in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), which is still the law, that "the Bill of Rights denies those in power any legal opportunity to coerce…. consent" through tactics of "expulsion" from a place a person has a legal right to be. Coercion is illegal and should be fined.

VI. THE BALANCE OF HARDSHIPS AND PUBLIC INTEREST STRONGLY FAVOR INJUNCTIVE RELIEF

This court should grant Employees a TRO and a preliminary injunction, if not a permanent injunction, because the public interest favors an injunction. *Jolly v. Coughlin*, 76 F.3d 468, 473 (2d Cir. 1996) When the government is the defendant, the "balance of hardships" and "public interest" factors "merge." *725 Eatery Corp. v. City of New York*, 408 F. Supp. 3d 424, 469 (S.D.N.Y. 2019). It is self-evident that the irreparable harm to the Employees substantially outweighs any hardship to the City because the requested injunction merely asks that the City be ordered to do what they were already legally bound to do. Any financial harm that may result from the City's willful refusal to follow this law has been self-inflicting, especially when the City received billions from the Federal Cares Funding and the CDC to comply with the OSHA requirements. Moreover, there is a strong public interest for issuing the injunction as there are thousands of other employers around the county who are also wrongly enforcing an "unauthorized vaccine safety method" and denying employees their auto religious exemptions, which in the State of New York is a felony because most private employers are not licensed to prescribe the vaccine as a medical treatment for their employee. The City's Law Department flagrantly faulty "Guidance Letter" has been indexed on the Internet at the URL[10] where smaller employers can be misguided to follow the City's illegal acts.

VII. CONCLUSION

The Employees respectfully requests the Court to grant its application for a temporary restraining order and a preliminary injunction and all appropriate relief requested until the resolution of Employees pending Motion for Summary Judgment for a permanent injunction on the merits and the resolution of their First Amendment damages claims.

Dated: September 2, 2022

[10] See Guidance Letter at https://www1.nyc.gov/assets/doh/downloads/pdf/covid/vaccination-workplace-accommodations.pdf

Respectfully submitted,

/s/ Jo Saint-George

Jo Saint-George, Esq.
14216 Dunwood Valley Dr
Bowie MD 20721-1246
Email: jo@woc4equaljustice.org

Donna Este-Green, Esq. Bar#2517688
25 Fairway Dr.
Hempstead, NY 11550
Women of Color for Equal Justice

Tricia S. Lindsay, Esq.
531 E. Lincoln Ave., Suite 5B
Mount Vernon, New York 10552
ph: 860-783-8877
fax: 914-840-1196
email: TriciaLindsayLaw@gmail.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WOMEN OF COLOR FOR EQUAL JUSTICE, et. al.

Plaintiffs,

v.

THE CITY OF NEW YORK, MAYOR ERIC L. ADAMS, COMISSIONER ASHWIN VASAN, MD, PHD DEPARTMENT OF HEALTH AND MENTAL HYGIENE, DEPARTMENT OF EDUCATION, AND DOES 1-20

Defendants.

ORDER TO SHOW CAUSE FOR TERMPORARY RESTRAINING ORDER AND PRELMININARY INJUNCTION
[PROPOSED]

INDEX No.: 1:22 CV 02234-EK-LB

Upon consideration of the previously filed (1.) Plaintiffs Memorandum of Law in Support of its Motion for Temporary Restraining Order and Preliminary Injunction dated August 31, 2022: (2.) the Declaration of Jo Saint-George dated August 31, 2022, with supporting exhibits annexed thereto; (3.) Affidavit of OSHA Expert Bruce Miller, CIH dated ,2022 together with the exhibit(s) annexed thereto; (4.) Affidavit of Medical Expert Baxter Montgomery, MD dated ,2022, together with the exhibit(s) annexed thereto; (5.) Affidavit of Remo Dell Ioio dated _____, 2022, together with the exhibit(s) annexed thereto (6.) Affidavit of Elizabeth Loiacono dated _____, 2022, together with the exhibit(s) annexed thereto; (7) Affidavit of Julia Harding dated , 2022, together with the exhibit(s) annexed thereto; (8) Affidavit of Ayse P. Ustares dated _____, 2022, together with the exhibit(s) annexed thereto; (9.) Sara Coombs-Moreno dated ____, 2022, together with the exhibit(s) annexed thereto; (10.) Sancha Browne dated ,2022, together with the exhibit(s) annexed thereto; (11.) Amoura Bryan dated 2022, together with the exhibit(s) annexed thereto; (12.) Zena

Wouadou dated ,2022, together with the exhibit(s) annexed thereto; (13.) Tracy-Ann Francis Martin dated ,2022, together with the exhibit(s) annexed thereto; (14.) Michelle Hemmings Harrington dated ,2022, together with the exhibit(s) annexed thereto; (15.) Bruce Reid dated , 2022, together with the exhibit(s) annexed thereto; (16.) Joseph Rullo dated , 2022, together with the exhibit(s) annexed thereto; (17) Jesus Coombs dated ,2022, together with the exhibit(s) annexed thereto having reviewed the Memorandum of Law, supporting Declarations, Affidavits, exhibits submitted therewith, and having found sufficient reason being alleged and good cause appearing therefore, it is hereby:

ORDERED that above-named Defendants, show cause before this Court, at Room ____, 225 Cadman Plaza East, in the City and County of Brooklyn and State of New York, on the ___day of _____, 2020, at _____o'clock in the _____ thereof, or as soon thereafter as counsel may be heard, why an order should not be issued, pursuant to Rule 65 of the Federal Rules of Civil Procedure, preliminarily enjoining Defendant, his representatives and agents, and all persons acting in concert or in participation with Defendants, or having notice, from enforcing the eight (8) Covid-19 vaccine emergency orders (the "Vaccine Orders") issued through the New York City Department of Health requiring employees of the City of New York (the "City") and employees of private sector employers within the jurisdiction of the City of New York to provide proof of vaccination before entering into any City building or private sector employer building, until such time as the Court resolves Plaintiff's application for relief in this case; and it is further

ORDERED that, pending the Court's resolution of Plaintiffs motion for a preliminary injunction, Defendants, their representatives and agents, and all person acting in concert or in participation with Defendants, or having notice, shall be temporarily restrained and enjoined from enforcing the Vaccine Orders; and it is further

ORDERED that Defendants are barred from preventing Plaintiffs from returning to their jobs or interfering in any with their access to the City building or any facilities they once worked in before being locked out of their jobs; and it is further

ORDERED that Defendants are barred from continuing to withhold compensation from Plaintiffs once they return to their jobs; and it is further

ORDERED that Defendants are barred from withholding OSHA authorized safety precautions like "remote work" at home or safety equipment, like Powered Air Purifying Respirators (PAPR), mandated by the OSHA Respiratory Standard or General Duty Clause, or any other OSHA authorized safety precautions under the Respiratory and General Duty Clause or CDC approved safety equipment or precautions also available to vaccinated City employees; and it is further

ORDERED that Defendants are barred from requiring Covid-19 safety precautions not required of vaccinated City employees, and it is further

ORDERED that Defendants are barred from withholding Plaintiffs backpay or compensation owed to them or which should have been paid to Plaintiffs had Plaintiffs not been put on leave without pay since the date Plaintiffs where placed on leave without pay until the day Plaintiffs return to work, and it is further

ORDERED that sufficient cause having been shown, service of this Order and all of the papers submitted in support thereof shall be made on Defendant's counsel and deemed effective if it is completed by electronic mail on or before the _____; and it is further

ORDERED that Defendant's answering papers on the motion for a preliminary injunction, if any, shall be filed with the Clerk of this Court and served upon the attorneys for

Plaintiff via ECF, by no later than _____, and that any reply by Plaintiff to be filed and served by ECF by _____.

IT IS SO ORDERED

Dated: _____ _____

Brooklyn, New York United States District Judge, Eric R. Komitee

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WOMEN OF COLOR FOR EQUAL JUSTICE, WOMEN OF COLOR FOR EQUAL JUSTICE, REMO DELLO IOIO, ELIZBETH LOIACONO, SUZANNE DEEGAN, MARITZA ROMERO, JULIA. HARDING, CHRISTINE O'REILLY, AYSE P. USTARES, SARA COOMBS-MORENO, JESUS COOMBS, ANGELA VELEZ, SANCHA BROWNE, AMOURA BRYAN, ZENA WOUADJOU, CHARISSE RIDULFO, TRACY-ANN FRANCIS MARTIN, KAREEM CAMPBELL, MICHELLE HEMMINGS HARRINGTON, MARK MAYNE, CARLA GRANT, OPHELA INNISS, CASSANDRA CHANDLER, AURA MOODY, EVELYN ZAPATA, SEAN MILAN, SONIA HERNANDEZ, BRUCE REID, JOSEPH RULLO, AND CURTIS BOYCE, JOSESPH SAVIANO, MONIQUE MORE, NATALYA HOGAN, JESSICA CSEPKU, ROSEANNE MUSTACCHIA, YULONDA SMITH, MARIA FIGARO, RASHEEN ODOM, FRANKIE TROTMAN, GEORGIANN GRATSLEY, EDWARD WEBER, MERVILYN WALLEN, PAULA SMITH individually and on behalf of similarly situated individuals,

Plaintiffs,

Plaintiffs,

v.

THE CITY OF NEW YORK, MAYOR ERIC L. ADAMS, COMISSIONER ASHWIN VASAN, MD, PHD DEPARTMENT OF HEALTH AND MENTAL HYGIENE, DEPARTMENT OF EDUCATION, AND DOES 1-20

Defendants.

INDEX No.: 1:22 CV 02234-EK-LB

DECLARATION OF JO SAINT-GEORGE, ESQ. IN SUPPORT OF PLAINIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Jo Saint-George, Esq., declare as follows:

1. I am an attorney duly admitted in the practice of law in the State of Arizona and serve as a pro bono lawyer for the organization Women of Color for Equal Justice a Maryland non-profit social justice organization. I am one of the attorneys representing the Plaintiff in this case and I have been admitted by this Court Pro Hac Vice.

2. I respectfully submit this Declaration in support of Plaintiff's Motion for Preliminary Injunction and Application for a Temporary Restraining Order, and fully incorporate all pleadings and the Memorandum of Law herein.

3. Attached as hereto are the following Exhibits submitted in support hereof.

4. I declare under penalty of perjury that all of the below attached exhibits that are listed below are true and correct copies of what the Exhibit Name describes them to be.

EXHIBITS

Exhibit# & ECF#	Exhibit Name
1.	NYCDOH Order 8-24-2021 Covid-19 Mandate for DOE – Employees, Contractors & Others
2.	NYCDOH Order 9-12-2021 Covid-19 Mandate for Child Care Workers
3.	NYCDOH Order 9-15-2021 Covid-19 Repeal & Restate for DOE – Employees, Contractors & Others
4.	NYCDOH Order 9-28-2021 Covid-19 Revision of DOE Effective Date Requirement
5.	NYCDOH Order 10-20-2021 Covid-19 Mandate for City Workers & Certain City Contractors
6.	NYCDOH Order 10-21-2021 Covid-19 Supplemental Mandate Certain City Contractor
7.	NYCDOH Order 11-15-2021 Covid-19 Mandate for Child Care & Early Intervention Program Workers
8.	NYCDOH Order 12-2-2021 Covid-19 Mandate for Private School Staff
9.	NYCDOH Order 12-13-2021 Covid-19 Mandate – Private Employer Workplaces & Staff
10.	OSHA Act of 1970 – Entire Statute - cited sections and clauses highlighted – 29 USC 652 §3 (8) - Standards Definition 29 USC 654 §5 (a) – Duties of Employers 29 USC 655 §6(b) – Secretary Authority 29 USC 655 §6(b)(6)(A) – Temporary Variance 29 USC 655 §6(d) – Permanent Variance 29 USC 667 §18(a)(b) – State Plans 29 USC 669 §20 (a)(5) – Auto Religious Exemptions
11.	Harassing Letters from Various City Agencies Dated August 22, 2021, & Letters from June 2022
12.	OSHA Regulations – only sections cited - §1910.132-134 – Respiratory Regs, §1910.1030 - Bloodborne Pathogen Regs §1905 – Variance Regs

13.	"All About OSHA" – U.S. Department of Labor Publication – Page 1-4 only
14.	NYC Office of Corporate Counsel – Guidance Letter
15.	OSHA Variance In Effect & Interim Order from 1976 - 2022 Variances Denied & Withdrawn – 1995 - 2022 Completed Variance Projects thru 2021
16.	World Health Organization – Declares Covid-19 a Global Pandemic on March 11, 2020
17.	World Health Organization – Declares H1N1 a Global Pandemic 2009 & OSHA Letter No New Standards
18.	CDC – Scientific Brief: SARS-CoV-2 Transmission May 7, 2021
19.	NIOSHA & CDC Hospital Respiratory Tool Kit 2015
20.	New York Public Health Laws - §206 – Prohibits Adult Vax, §2194 – Employees must "agree" to vaccines
21.	New York City Regulations – Title 12 §800.3 and Adm Code §17-109
22.	New York Education Law - §6512, §6521-65-22 – Felony to prescribe w/o license
23.	New York Education Law §3020, New York Adm. Code §16-101, New Civil Service Law §75 – Collectively Progressive Discipline Due Process Laws for City Employees
24.	OSHA & CDC K-12 Guidelines – 2020 – Respiratory Standard & Remote Work apply
25.	New York State Plan OSHA Website Homepage and NY Website
26.	New York Directive – Department of Corrections – Respirator Guide
27.	Ford Motor Company Press Release April 13, 2020
28.	Report from New York City Independent Budget Office – May 2020 -Federal Funding to the City
29.	OSHA/Department of Labor Response to Emergency Petition from AFLCIO
30.	OSHA June 2021 ETS – no vaccine mandate only instructions for "vaccine access"
31.	New York Times Nov. 1, 2021, Article re Number of City Employees Placed on Leave

I hereby certify that I have made the following efforts to give notice to Defendants' counsel of this emergency application in the following manner: (1) at 3:37pm on August 26, 2022, I emailed notice to Elisheva Rosen, Assistant Corporation Counsel, New York City Law Department Labor and Employment Law Division; and I personally called Ms. Rosen by phone on August 26, 2021 and again I emailed Ms. Rosen on Wednesday August 31, 2022 at 3:31pm

requesting names of any additional New York City Law Department counsel that should be included and I have sent an email September 2, 2022 with copies of all the relevant supporting documents for the TRO and Preliminary documents to Ms. Rosen, along with the service email for the New York City Law Department including to Lisa Landau, Mr. Townley and Ms. Dawkins with the New York City Department of Health. Additional notice should not be necessary because of the emergency nature of our application and the broad and far-reaching injury to multitudes of New York City employees.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed September 2, 2022.

Respectfully submitted,

/s/ Jo Saint-George

Jo Saint-George, Esq.
14216 Dunwood Valley Dr
Bowie MD 20721-1246
jo@woc4equaljustice.org

AFFIDAVIT OF BAXTER D. MONTGOMERY, MD

STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

BAXTER DELWORTH MONTGOMERY, MD, declares under penalty of perjury pursuant to Texas Civil Practice and Remedies Code Title 6 Section 132 that the foregoing is true and correct:

1. I am above the age of 18 and am competent to make this affidavit.
2. I am a Diplomate of the American Board of Internal Medicine, for cardiovascular diseases, licensed with the Texas State Board of Medical Examiners since 1991 under Permit Number H9549.
3. I am President and CEO of Houston Associates of Cardiovascular Medicine, PA. performing various forms of cardiovascular clinical care.
4. I have medical privileges at and serve as an attending physician for Memorial Hermann Hospital - The Texas Medical Center, The Heart and Vascular Institute at the Memorial Hermann Hospital - The Texas Medical Center,
5. I have chaired the Patient Safety Committee at Twelve Oaks Medical Center.
6. For 25 years until the present, I have served as Teaching Faculty for Cardiology Fellows at The Heart and Vascular Institute Memorial Hermann Hospital - The Texas Medical Center. (See my Curriculum Vita attached as **Exhibit A**).
7. Because cardiovascular disease has been the #1 cause of death in the United States, fifteen (15) years ago I began implementing lifestyle interventions within my clinical practice.

8. There are numerous peer reviewed studies on the benefits of a plant-based diet and lifestyle interventions in fighting disease.[1]

9. Currently, as President and CEO of Houston Associates of Cardiovascular Medicine, PA, I am responsible, with my staff, for the oversight and compliance with state and federal workplace and patient safety laws applicable to all healthcare facilities.

10. Therefore, I have general knowledge and working experience with the standards, regulations and guidance provided by the Department of Labor, Occupational Safety and Health Administration (OSHA). As part of my day-to-day duties as a healthcare clinical practitioner and compliance administrator during this Covid Pandemic, I constantly worked to ensure that my healthcare facility complies with patient and employee workplace safety standards.

11. Since March 2020 when the Pandemic was declared, I have treated many patients who have either tested positive for the virus that causes Covid-19, or have had Covid-19 related symptoms and I make this affidavit based on my clinical patient experience as well as based on my knowledge and experience as a practicing physician.

12. I have been retained by Attorney Jo Saint-George and Attorney Donna Este-Green of the non-profit organization the Women of Color for Equal Justice to give expert opinions based on my knowledge and experience as a licensed medical professional.

13. Specifically, I have been retained to provide opinions regarding whether or not employees who work in a healthcare setting with or without direct patient care responsibilities, or who work for municipal or private employer entities with or without direct public contact or have minimal public contact should be terminated by an employer for refusing to submit to the FDA emergency authorized injection called the "Covid-19 vaccine" based on applicable healthcare and general workplace safety standards as it relates to the medical efficacy of the COVID-19 vaccines and their potential risks.

[1] See Plant-based Research Database - https://plantbasedresearch.org/

14. In preparation of providing my opinions herein, I have reviewed the following: 1) New York City Department of Health and Mental Hygiene vaccine orders from August 10, 2021 to December 13, 2021, 2) applicable regulations of the U.S. Department of Labor, Occupational Safety and Health Administration, and 3) the affidavit and documents provided by Certified Industrial Hygienist, Mr. Bruce Miller, MS, CIH, President of Health & Safety, LLC.

BACKGROUND & PRELIMINARY OPINIONS

15. Between August 10, 2021 and December 13, 2021, the New York City Department of Health and Mental Hygiene (NYCDOHMH) issued approximate twelve (12) Covid-19 Emergency Orders applicable to New York City employees within its various agencies ("NYC Emergency Orders").[2]

16. Based on my review of the NYC Emergency Orders, the primary purpose of the orders was to mandate all New York City employee to submit to taking Covid-19 vaccinations as a workplace safety and health standard that reduces the spread and contraction of the virus that causes the communicable disease "Covid-19" in New York City facilities.

17. While the Covid Emergency Orders state that the Covid-19 vaccine requirements are for the benefit of the "health, safety, and welfare" of New York City residents, the orders only apply to New York City employees and do not indicate that there is a direct impact on the residents of the City. Based on my general public health knowledge as a clinician, the Emergency Orders are directed at City Employees in their workplace.

[2] See List of New York City Department of Health & Mental Hygiene list of Orders at https://www1.nyc.gov/site/doh/about/hearings-and-notices/official-notices.page

OPINIONS REGARDING COVID-19 WORKPLACE SAFETY REQUIREMENTS

18. My opinions regarding workplace safety requirements in general and for healthcare facilities are as follow and are made to a degree of medical certainty:

a. the Covid-19 vaccines utilized in the United States are pharmacological medical treatments used to reduce symptoms that result from an infection of the viral pathogen and/or various variants of the Sars Cov2 virus, which causes the infectious disease identified by the Centers for Disease Control as Covid-19.

b. "Covid-19 vaccines" do not eliminate the virus that causes infections of Covid-19 from the atmosphere of any in door facility. The virus that causes Covid-19 and/or its variants is an atmospheric contaminant or airborne hazard that should be controlled in any in-door facility which could stop or prevent the contraction of any infectious communicable diseases that can cause serious injury or death.

c. Based on my general clinical knowledge of workplace safety standards for healthcare facilities and general industry facilities, the OSHA Standard at 29 C.F.R. § 1910.134 et seq.[3] titled "Respirator Protection" provides the minimum health and safety standard that any facility can utilize to reduce the risks of severe injury or death associated with any airborne contaminant that cannot be eliminate or controlled by other OSHA standards or methods.

d. Because the Covid-19 vaccines cannot remove the virus that causes Covid-19 infections from the atmosphere of any facility, based on my clinical experience and hospital experience, N95 respirators or Powered Air Purification Respirators, which have the highest efficacy in reducing exposure to any airborne contaminate and can be used and are necessary, when nothing else eliminates the virus, to prevent the spread

of any airborne communicable disease according to the OSHA and CDC published guide titled "Hospital Respiratory Protection Program Toolkit – Resources for Respiratory Program Administrators" published in May 2015.[4]

e. There are entire industries of employees that are required to wear N95 respirators or PAPR's everyday eight hours a day, specifically industrial workers in the automotive, welding, commercial painting utilize this equipment to protect their employees from airborne contaminates. Therefore, employees in any workplace that have a risk of exposure to or can spread a viral airborne contaminant should be provided by an employer with at least an N95 respirator or a PAPR consistent with the OSHA standards set forth in 29 U.S.C. 1910.134, especially when necessary to protect the health of an employee as indicated in 1910.134(a)(2).

f. Based on my clinical experience treating patients with communicable disease, when the existing OSHA Respiratory Protection standards contained in Section 1910.134[5] are properly implemented in any facility, along with all other OSHA standards applicable to addressing communicable disease, vaccines, including the Covid-19 vaccine, (which cannot stop the spread or transmission of the virus) are not needed to provide a safe workplace for a employees.

g. While the OSHA standard 1910[6] titled Bloodborne pathogens recommends making Hep B vaccine available to employees who have occupational exposure to hepatitis B, the vaccine does not cure nor remove the blood-borne virus that can cause chronic infection in the liver.

---

[4] See Hospital Respiratory Protection Program Toolkit, May 2015 at https://www.osha.gov/sites/default/files/publications/OSHA3767.pdf

[5] See OSHA Section 1910.134 Respiratory Protection at https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134

[6] See OSHA Bloodborne pathogens – Section 1910.1030 - https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1030

h. In general, no vaccine, whether the hepatitis B vaccine or a Covid-19 vaccine, cures or eliminate a communicable diseases 100%.

i. While the main purpose of New York City Department of Health Covid Emergency Orders is to reduce the spread of Covid-19 in the workplace of New York City facilities, the Emergency Orders also carry the unintended consequence of introducing "new hazards" into the body of City employees via the Covid vaccines that can directly affect the health and safety of the City's employees which conflicts with OSHA.

j. The new hazard(s) include the known and reported severe and life-threatening adverse effects from the injection of the Covid-19 vaccine. All healthcare administrators of vaccines are required to report adverse effects of any vaccine to the Centers for Disease Control and Prevention (CDC) Vaccine Adverse Events Reporting System. As of March 18, the system reported that between December 14, 2020, and March 11, 2022, 1,183,495 reports of adverse events from all age groups following COVID vaccines, including 25,641 deaths and 208,209 serious injuries have been reported. As of the dates of the NYC and NYS Covid Emergency Orders were issued, in the VAERS data released September 17, 2021, by the CDC showed a total of 701,561 reports of adverse events from all age groups following COVID vaccines, including 14,925 deaths and 91,523 serious injuries between Dec. 14, 2020 and Sept. 10, 2021.[7]

k. Because the OSHA General Duty Clause at 29 U.S.C. §654[8] requires employers to recognize hazards that are "likely to cause death or serious physical harm to …employees" and to comply with the OSHA standards promulgated to eliminate or reduce a hazard, when evaluated comprehensively, the OSH Act does not list vaccines

[7] See VAERS Reporting Requirements for Covid-19 Vaccines at https://vaers.hhs.gov/reportevent.html
[8] See OSH Act of 1970 Genera Duty Clause 29 U.S.C. 654 at https://www.osha.gov/laws-regs/oshact/section5-duties

as a promulgated standard that eliminates or reduces occupational environmental airborne contaminates or atmospheric contaminants in a workplace.[9]

i. Finally, OSHA standards allow employers to modify work locations also to eliminate an employee's exposure to hazards in the workplace. Remote work is effective in eliminating employee exposures to airborne contaminates that may be in a workplace and is a required to be used by employers before the use of other methods that introduce hazards like vaccines.

19. I am not aware of employees having been terminated for refusing a Hep B vaccine after exposure, therefore there is not need to terminate an employee for refusing to submit to the Covid-19 vaccine.

Additional Opinions Regarding Other Workplace Safety Duties Related to Covid-19

20. According to a CDC report around November 2020[10] before Covid vaccines became available in the U.S., the primary cause of a person suffering severe Covid or a Covid related death after exposure to the respiratory hazard is the existing of one or more pre-existing chronic disease like heart disease, diabetes, chronic livers disease, chronic pulmonary disease, to name a few.

21. The CDC for years has identified poor diet as one of four causes of chronic disease[11] in the U.S., which are the leading causes of all death.[12]

22. For many years, scientific medical journals have concluded that the consumption of red meat and processed meat are the leading cause of most chronic disease and death in the United States.[13]

---

[9] See OSH Act of 1970 Comprehensive Table of OSHA laws & Regulations - https://www.osha.gov/laws-regs/regulations/standardnumber

[10] Centers for Disease Control and Prevention (CDC). Coronavirus disease 2019 (COVID-19)—people with certain medical conditions. Atlanta (GA): US Department of Health and Human Services, CDC; Nov. 2020. https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html

[11] Centers for Disease Control and Prevention (CDC), Publication by the National Center for chronic Disease Prevention and Health Promotion – "About Chronic Disease" https://www.cdc.gov/chronicdisease/about/index.htm

[12] National, Heart, Lung and Blood Institute - publication "Americans poor diet drives $50 billion a year in health care costs December 17, 2019" https://www.nhlbi.nih.gov/news/2019/americans-poor-diet-drives-50-billion-year-health-care-costs

[13] "Red meat and processed meat consumption and all-cause mortality:" a meta-analysis

23. New York law defines "potentially hazardous food" as any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, cooked potato, in a form capable of supporting: (1) rapid and progressive growth of infectious or toxigenic microorganisms; or (2) the slower growth of C. botulinum.[14]

24. While the NY State and FDA defines potentially hazardous foods based on the ability of the "food" to support or serve as reservoirs of harmful and infectious pathogens, which include pathogenic protozoans, bacteria, and viruses, as a public health researcher and practitioner, it is my opinion that potentially hazardous foods also include animal foods whose intrinsic factors (which include but are not limited to animal blood, fat and flesh) when consumed have demonstrated in over a dozen scientific studies to cause chronic disease and impairment of the body's natural immune response.

25. Base on my medical experience and knowledge as a medical practitioner who prescribes (as a scientifically supported evidence based intervention) whole plant-based foods and lifestyle interventions to treat chronic disease, including heart disease, renal disease, obesity, both in the clinical and acute and intensive care setting, it is my opinion that employers that provide employees food or meals in the workplace also have a duty to remove and eliminate "potentially hazardous food" from employer operated or contracted cafeterias and specifically from patient meal services and vending machines to also reduce the risk of employees and patients suffering severe Covid or Covid related illnesses.

26. In a study published June 11, 2018 by the CDC that included 5,222 employees across the US, it was found that the foods people get at work tended to be high in empty calories —

Susanna C Larsson, Nicola Orsini, Am J Epidemiol Feb. 1, 2014;179(3):282-9. doi: 10.1093 https://pubmed.ncbi.nlm.nih.gov/24148709/ see also "The global diabetes epidemic as a consequence of lifestyle-induced low-grade inflammation" by H. Kolb and T. Mandrup-Poulsen, Diabetologia Jan, 2010;53(1):10-20. - https://pubmed.ncbi.nlm.nih.gov/19890624/

[14] See New York Codes, Rules and Regulations Section 14-2.3.

those from solid fats and/or added sugars — with more than 70 percent of the calories coming from food that was obtained for free in the workplace.[15]

27. In a 2019 scientific study by a Dr. Robert Vogel (which was summarized in the documentary The Game Changers,[16]) on the impact of the daily consumption of animal fat on human endothelial function, it was determine that the consumption of a single meal that consists of "potentially hazardous food" impairs blood flow throughout the body.

28. Many studies have shown that impaired endothelial function has a direct impact on immune function that can cause severe disease and death.

29. In a study published in April 2021, before any Covid-19 mandates were order, it was reported that endothelial dysfunction and immunothrombosis as key pathogenic mechanisms in severe COVID-19 and Covid related deaths.[17]

30. Therefore, while implementing the most~~potentially~~ effective risk mitigation control to remove the existence of Covid viral pathogens from the workplace atmosphere either through: 1) HEPA filtration systems, 2) ~~reducing an employee's risk of exposure~~ through ~~the use of~~ remote work, or 3) through the use of PAPR respirators to eliminate an employees exposure to the airborne pathogen (either singularly or in combination), in my opinion, removing the "potentially hazardous foods" is equally necessary, if not more important to preventing severe Covid-19 and death in employees.

31. The statements and opinions made in this Affidavit are preliminary and I reserve the right to add to, amend or modify my opinions as more facts are provided during the course of any litigation of the claims by the Classes of Plaintiffs for which this affidavit is provided.

---

[15] Foods and Beverages Obtained at Worksites in the United States by Stephen Onufrak CDC Epidemiologist, in Journal of the American Academy of Nutrition and Dietetics 119(6) DOI:10.1016/j.jand.2018.11.011

[16] 3 Minute video on the Impact on Animal Fat on Endothelial Function study by Dr. Robert Vogal, Cardiologist– 2019 study from the "Game Changers" documentary https://tinyurl.com/5du5nuke

[17] Endothelial dysfunction and Immunothrombosis as key pathogenic mechanisms in COVID-19 By Aldo Bonaventura, and Alessandra Vecchié…. Nat Rev. Immunol. 2021; 21(5): 319–329 – see https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8023349/

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

Dated this 19th day of April, 2022.

DR. BAXTER MONTGOMERY MD

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 19th day of April, 2022, by Dr. Baxter Montogery, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.

NANCY NAVA
Notary Public, State of Texas
Comm. Expires 05-25-2025
Notary ID 133120530

Signature of Notary Public

[Affix Notary Seal]

1. The California Respirator Program Administrators toolkit can be accessed at: https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/OHB/Pages/RespToolkit.aspxexternal icon
2. Beckman S, Materna B, Goldmacher S, Zipprich J, D'Alessandro M, Novak D, Harrison R [2013]. Evaluation of respiratory protection programs and practices in

BAXTER DELWORTH MONTGOMERY, MD

The Plant-Based Physician
Montgomery Heart & Wellness
Video Bio

EXPERIENCE:

Clinical Assistant Professor
The University of Texas Health Science Center
Department of Medicine
Division of Cardiology/Clinical Cardiac Electrophysiology

President and CEO
Houston Associates of Cardiovascular Medicine, PA.
(1997-Present)

Executive Director
The Johnsie and Aubary Montgomery Institute of Medical Education and Research (a 501(c) 3 nonprofit organization)

BIRTHPLACE:

Houston, Texas
United States of America

OFFICE ADDRESS:

10480 South Main Street
Houston, Texas 77025
(713) 599-1144 phone
(713) 599-1199 fax
bmontgomery@drbaxtermontgomery. com

UNDERGRADUATE EDUCATION:

William Marsh Rice University
Houston, Texas
Bachelor's Degree in Biochemistry (1986)

GRADUATE EDUCATION:

The University of Texas Medical Branch at Galveston
Galveston, Texas
Doctor or Medicine

RESIDENCY:

Baylor College of Medicine
Houston, Texas
Internal Medicine

FELLOWSHIP:

The University of Texas Health Science Center at Houston
Houston, Texas
Cardiovascular Diseases
Clinical Cardiac Electrophysiology

CERTIFICATION:

Diplomate of the American Board of Internal Medicine, Cardiovascular Diseases

Diplomate of the American Board of Internal Medicine, Clinical Cardiac Electrophysiology

LICENSURE:

Texas State Board of Medical Examiners (Since 1999)
Permit Number H9549

HOSPITAL APPOINTMENTS:

Attending Physician
Memorial Hermann Hospital - The Texas Medical Center
Houston, Texas

Attending Physician
The Heart and vascular Institute
Memorial Hermann Hospital - The Texas Medical Center
Houston, Texas

Consulting Physician
Select Specialty Hospital - Heights
Houston, Texas

TEACHING RESPONSIBILITES:

Teaching Faculty for Cardiology Fellows and Clinical Advanced Nurse Practitioners
The Heart and Vascular Institute
Memorial Hermann Hospital - The Texas Medical Center
1997 - Present

Cardiovascular Disease Lecturer
GlaxoSmithKline, Inc.
2000 - Present

Cardiovascular Disease Lecturer
Novartis, Inc.
2006 - Present

Cardiovascular Disease Lecturer
Boston Scientific, Inc.
2006 - Present

Co-Director and Lecturing Faculty
Cardiology Concepts for Non-Cardiologists
(An Annual Houston Area Educational Symposium)

JAM Institute, Inc.
2006 - 2008

Steering Committee Member and Lecturing Faculty
Close the Gap
Boston Scientific, Inc.
2006 - Present

RESEARCH:

CLINICAL STUDIES:

ALLHAT: Antihypertensive and Lipid-Lowering Treatment to Prevent Heart Attack Trial. ALLHAT ALLHAT was a blinded, randomized trial that investigated the relative efficacy of different classes of antihypertensive agents in reducing stroke, illness and death from cardiovascular diseases. A subgroup of patients with hyperlipidemia was randomized comparing Pravastatin compared to usual care.
A Houston Site - Principal Investigator (1998)

INVEST: The International Verapamil SR/Trandolapril Study. INVEST was a randomized controlled clinical trial comparing a calcium antagonist treatment strategy (Isoptin® SR) with a non calcium antagonist treatment strategy for the control of hypertension in a primary care coronary artery disease patient population.
A Houston Site - Principal Investigator (2000)

INVEST SUB-STUDY: This study was a sub-study of the INVEST patient population designed to evaluate the impact of genetic differences on pharmacokinetics.
A Houston Site - Principal Investigator (2000)

The Safety and Efficacy of PNU-182716 Versus Rosiglitazone: This was a one-year, randomized, double blind, parallel group, and active comparator study.
A Houston Site - Principal Investigator (2000)

FACTOR: Fenofibrate and Cerivastatin Trial Optimizing Response. FACTOR was a multicenter, randomized, double blind, placebo controlled, parallel group, study of the safety and efficacy of Cerivastatin in combination with Fenofibrate compared to Cerivastatin alone, Fenofibrate alone and placebo in a population of Type 2 Diabetic Men and Women.
Grant Sponsor - Bayer 2001
A Houston Site - Principal Investigator

ADHERE: ADHERE was a national registry of patients admitted to hospitals with acute decompensated congestive heart failure.
A Houston Site - Principal Investigator (2001)

STELID TM AND STELIX TM LEADS STUDY: This study was a
safety and efficacy study of steroid-eluting cardiac pacing leads.
Grant Sponsor - Ella Medical 2002

ARRHYTHMIA PATHWAY STUDY: This was a patient registry study designed to assess the efficacy of a clinical algorithm for identifying and assessing patients at risk of sudden cardiac arrest.
Grant Sponsor - Medtronic, Inc. 2002
A Houston Site - Principal Investigator

RAPIDO CATHETER STUDY: This study was to evaluate the efficacy of a left ventricular defibrillator-pacemaker lead delivery system.
Grant Sponsor - Guidant, Inc. 2003
A Houston Site - Principal Investigator

PROTOS HEART RATE DISTRIBUTION STUDY: This was a clinical study designed to compare the heart rate distribution in patients undergoing pacemaker implants requiring heart rate response therapy. This study compared the heart rate distribution of accelerometer rate response therapy to the BIOTRONIK Closed Loop System therapy.
Grant Sponsor - Biotronik, Inc. 2003
A Houston Site - Principal Investigator

CSPP100A2404 - A 54 week, randomized, double-blind, parallel-group, multicenter study evaluating the long-term gastrointestinal (GI) safety and tolerability of Aliskiren (300 mg) compared to Ramipril (10 mg) in patients with essential hypertension.
Sponsored by Novartis, since April 4, 2008.
A Houston Site - Principal Investigator

CSPP100AUS03 - An 8 week Prospective, Multicenter, Randomized, Double-Blind, Active Control, Parallel Group Study to Evaluate the Efficacy and Safety of Aliskiren HCTZ versus Amlodipine in African American Patients with Stage 2 Hypertension.
Sponsored by Novartis, since August 2008.
A Houston Site - Principal Investigator

CSPP100A2409- An 8 week randomized, double-blind, parallel-group, multicenter, active-controlled dose escalation study to evaluate the

efficacy and safety of Aliskiren HCTZ (300/25 MG) compared to Amlodipine (10 mg) in patients with satage 2 systolic hypertension and diabetes mellitus.
Sponsored by Novartis, since December 2008.
A Houston Site - Principal Investigator

SPAlOOAUSOl - An 8 week randomized, double-blinded, parallel-group, multicenter, active-controlled dose escalation study to evaluate the efficacy and safety of Aliskiren Administered in Combination with Amlodipine (150/5 mg, 300/10 mg) versus Amlodipine alone (5 mg, 10 mg) in African American patient with Stage 2 Hypertension.
Sponsored by Novartis, since February 2009.

CLAF237B22Ol- A multicenter, randomized, double-blind study to evaluate the efficacy and long-term safety of vildagliptin modifies release (MR) as monotherapy in patients with type 2 diabetes.
Sponsored by Novartis, since February 2009.
A Houston Site - Principal Investigator

CLAF237B2224 - A multi-center, randomized, double-blind study to evaluate the efficacy and long-term safety of vildagliptin modified release (MR) as add-on therapy to metformin in patients with type 2 diabetes.
Sponsored by Novartis, since February 2009.
A Houston Site - Principal Investigator

Galaxy study: An aftermarket registry of one of the Biotronik implantable cardioverter defibrillators ICD leads (2009 to present)
A Houston Site - Principal Investigator

Paradigm study: A multicenter, randomized, double-blind, parallel group, active-controlled study to evaluate the efficacy and safety of LCZ696 compared to enalapril on morbidity and mortality in patients with chronic heart failure and reduced ejection fraction. 2009 -2014
A Houston Site - Principal Investigator

BASIC RESEARCH:

In Rapid Separation of Mitochondria from Extra- mitochondrial Space Applied to Rat Heart Mitochondria. An abstract presented at an NIH sponsored student research poster session, Univ. of Texas Medical Branch, Galveston, TX, June 17, 1987.

Regulation of the Adenine Nucleotide Pool-Size of Heart Mitochondria by the ADP/ATP Translocase. Abstract and poster presented at the Galveston-Houston Conference for Cardiovascular

Research, Univ. of Texas, Medical Branch, Galveston, TX, February 26, 1988.

The Adenine Nucleotide Pool-Size of Heart Mitochondria is Regulated by the ADP/ATP Translocase. Abstract presented at the 29th Annual National Student Research Forum, University of Texas Medical Branch, Galveston Texas, April 6-8, 1988.

Increased Frequency of the Deletion Allele of the ACE Gene in African-Americans Compared to Caucasians. This study evaluated the prevalence of the deletion allele of the ACE gene in a population of African Americans compared to Caucasians. The findings were presented at the annual meeting of the American College of Cardiology in March of 1996.

Determination of the effect of Calcium infusion on CGRP mRNA Production. A pilot study investigating a possible mechanism by which calcium supplementation may increase CGRP (Calcitonin gene-related peptide, a potent peripheral vasodilator) content in afferent neurons of Sprague Dawley rats, 1990.

PUBLICATIONS:

Montgomery, B, D, MD. A Review of Microanatomy for Medical Students, 1987, chapter 1-8.

Baxter D. Montgomery, MD, Elizabeth A. Putnam, Ph.D., John Reveille, MD, Dianna M. Milewicz. MD, Ph.D.: Increased Frequency of the Deletion Allele of the ACE Gene in African-Americans Compared to Caucasians. (Abstract) J. American College of Cardiology March, 1996

Doyle, N.M., Monga, M., **Montgomery, B.**, Dougherty, A.H.: Arrhythmogenic right ventricular cardiomyopathy with implantable cardioverter defibrillator placement in pregnancy. J Mat Fetal Neo Med 18:141-4, 2005

Baxter D. Montgomery, MD Co-Author of Dreams of the nation Book: "Improving Health" with focus on strengthening the food and health connection and replacing unnatural foods from our diet and replacing them with natural foods as a way of reversing illness. 2009

Montgomery, Baxter D: The Food Prescription for Better Health, Houston: Delworth Publishing, 2011

Montgomery,B.D, MD, Effects of the Montgomery Food Prescription on Clinical Biomarkers of Cardiovascular Disease. Plant-based diet can improve clinical biomarkers associated with cardiovascular disease. This study was submitted to the 10th annual Texas A&M University System Pathways Student Research Symposium 2012.

Baxter D. Montgomery, MD Co-Author of the book Rethink Food: About the need for revolutionary change in how to address chronic illness with optimal nutrition.2014

CLINICAL PRESENTATIONS:

Clinical Concepts for Non Cardiologist, Director and Faculty. An educational symposium held for primary care and other non-cardiology specialists in the Houston area. October 2006

Patients at Risk for Sudden Cardiac Arrest Dinner Symposium at the Houston Forum June, 2007

Clinical Concepts for Non Cardiologist, Director and Faculty. An educational symposium held for primary care and other non-cardiology specialists in the Houston area. October 2007

Clinical Concepts for Non Cardiologist, Director and Faculty. An educational symposium held for primary care and other non-cardiology specialists in the Houston area. October 2008

Houston Town Hall Meeting, Director and Faculty. Health summit on the benefits of a healthy nutritional lifestyle for the management of chronic illnesses held for both health care professional and the general public in the Houston area. 2009

Houston Town Hall Meeting, Director and Faculty. Health summit on the benefits of a healthy nutritional lifestyle for the management of chronic illnesses held for both health care professional and the general public in the Houston area. 2010

Houston Health Summit (Town Hall Meeting), Director and Faculty. Health summit on the benefits of a healthy nutritional lifestyle for the management of chronic illnesses held for both health care professional and the general public in the Houston area. 2011

Houston Health Summit (Town Hall Meeting), Director and Faculty. Health summit on the benefits of a healthy nutritional lifestyle for the management of chronic illnesses held for both health care professional and the general public in the Houston area. 2012

Houston Health Summit (Town Hall Meeting), Director and Faculty. Health summit on the benefits of a healthy nutritional lifestyle for the management of chronic illnesses held for both health care professional and the general public in the Houston area. 2013

PROFESSIONAL APPOINTMENTS:

Clinical Assistant Professor of Medicine, University of Texas Health Science Center - Houston 1996 - Present

Steering Committee Member, Boston Scientific Close the Gap Initiative 2005 - Present
Scientific/Medical Board of Advisors, Nutritional Excellence, Inc. 2007 - Present

Medical Board of Directors, Twelve Oaks Medical Center Independent Physician's Association 2005 - Present

Medical Executive Committee (Twelve Oaks Hospital), Member at Large 2002 - 2006

Patient Safety Committee (Twelve Oaks Hospital), Chairman 2002 - 2004

Physician Peer Review Committee (Twelve Oaks Hospital) 2002 - 2005

Medical Director, SCCI (Specialized Complex Care) Hospital, 2003 - 2005

Physician Relation Council Advisory Board, Unicare, 2002 - 2004

Aldine Education Foundation: The mission of the Aldine Education Foundation is to provide community-based support to the Aldine Independent School District in pursuit of excellence in teaching, innovation in the classroom and superior learning opportunities for all students.

CLINICAL INTERESTS:

Nutritional Lifestyle Interventions for the Management of Chronic Illnesses
Cardiac Pacing and Electrophysiology

Diastolic and Systolic Heart Failure
Hypertensive Heart Disease
Cardiovascular Exercise Physiology
Basic Echocardiography
Nuclear Cardiology
Diagnostic Cardiac Catheterization
Cardiovascular Wellness and Nutrition

PROFESSIONAL ASSOCIATIONS:

American College of Cardiology (Elected as Fellow of the College in January, 1999)
American Heart Association
Heart Rhythm Society (North American Society of Pacing and Electrophysiology, NASPE)
American College of Physicians
Harris County Medical Society
Houston Medical Forum

HONORS AND AWARDS:

Benjamin Spock Award for Compassion in Medicine - 2010

America's Top Physicians - 2007

Cumulative evaluation of "Superior" performance by senior house staff and faculty during first year of residency (Baylor College of Medicine), 1990

Outstanding Young Men of America, 1988

Kempner Award (University of TX Medical Branch) 1986-87 and 1987-88

Academic Scholarship (University of TX Medical Branch) 1986-87

Who's Who Among American Colleges and Universities (Rice University) 1986

Franz Brotzen Outstanding Senior Award (Rice University) 1986

Jones College Service Award (Rice University) 1986 and 1985

100 Black Men of Metropolitan Houston (Awarded in 2012) for the dedication to the improvement of the community.

Physicians Committee for Responsible Medicine- Member of Advisory Board- Current.

ACTIVITIES:

Gardening
Scouting
Physical Conditioning

Received: 1 June 2018 | Revised: 7 July 2018 | Accepted: 12 July 2018

DOI: 10.1002/clc.23027

WILEY CLINICAL CARDIOLOGY

CLINICAL INVESTIGATIONS

Consumption of a defined, plant-based diet reduces lipoprotein(a), inflammation, and other atherogenic lipoproteins and particles within 4 weeks

Rami S. Najjar[1] | Carolyn E. Moore[2] | Baxter D. Montgomery[3,4]

[1]Department of Nutrition, Georgia State University, Atlanta, Georgia

[2]Department of Nutrition and Food Science, Texas Woman's University, Houston, Texas

[3]University of Texas Health Science Center, Houston, Texas

[4]Montgomery Heart & Wellness, Houston, Texas

Correspondence
Rami S. Najjar, MS, Department of Nutrition, Georgia State University, Atlanta, Georgia.
Email: rnajjar@twu.edu

Funding information
Johnsie and Aubary Montgomery Institute of Medical Education and Research

Background: Lipoprotein(a) [Lp(a)] is a highly atherogenic lipoprotein and is minimally effected by lifestyle changes. While some drugs can reduce Lp(a), diet has not consistently shown definitive reduction of this biomarker. The effect of consuming a plant-based diet on serum Lp(a) concentrations have not been previously evaluated.

Hypothesis: Consumption of a defined, plant-based for 4 weeks reduces Lp(a).

Methods: Secondary analysis of a previous trial was conducted, in which overweight and obese individuals (n = 31) with low-density lipoprotein cholesterol concentrations >100 mg/dL consumed a defined, plant-based diet for 4 weeks. Baseline and 4-week labs were collected. Data were analyzed using a paired samples t-test.

Results: Significant reductions were observed for serum Lp(a) (−32.0 ± 52.3 nmol/L, P = 0.003), apolipoprotein B (−13.2 ± 18.3 mg/dL, P < 0.0005), low-density lipoprotein (LDL) particles (−304.8 ± 363.0 nmol/L, P < 0.0005) and small-dense LDL cholesterol (−10.0 ± 9.2 mg/dL, P < 0.0005). Additionally, serum interleukin-6 (IL-6), total white blood cells, lipoprotein-associated phospholipase A2 (Lp-PLA2), high-sensitivity c-reactive protein (hs-CRP), and fibrinogen were significantly reduced ($P \leq 0.004$).

Conclusions: A defined, plant-based diet has a favorable impact on Lp(a), inflammatory indicators, and other atherogenic lipoproteins and particles. Lp(a) concentration was previously thought to be only minimally altered by dietary interventions. In this protocol however, a defined plant-based diet was shown to substantially reduce this biomarker. Further investigation is required to elucidate the specific mechanisms that contribute to the reductions in Lp(a) concentrations, which may include alterations in gene expression.

KEYWORDS

general clinical cardiology/adult, lipoproteins, preventive cardiology, vegetarian diet

1 | INTRODUCTION

Lipoprotein(a) [Lp(a)] is an atherogenic lipoprotein structurally similar to low-density lipoprotein cholesterol (LDL-C), although synthesis occurs through independent pathways. Key differences include the linkage of apolipoprotein B100 (Apo-B) to apolipoprotein(a) on the LDL surface.[1,2] It has been estimated that expression of the genomic region encoding apolipoprotein(a) (*LPA* gene) accounts for approximately 90% of plasma Lp(a) concentrations.[3] Elevated Lp(a) is independently associated with cardiovascular disease,[4] and the LPA gene was observed to have the strongest genetic link to cardiovascular disease.[5] Individuals with Lp(a) plasma concentrations >20 mg/dL have twice the risk of developing cardiovascular disease and approximately 25% of the population may have this plasma concentration.[6] The mode of action by which Lp(a) exerts its atherogenic effect is likely similar to that of LDL-C, by deposition in the sub-endothelial space and uptake by macrophages mediated via the VLDL receptor.[7] Lp(a) is particularly atherogenic due to its unique property of being a carrier of oxidized phospholipids, in addition to its higher binding affinity to negatively charged endothelial proteoglycans.[8] Lp(a) can facilitate

endothelial dysfunction when concentrations are elevated likely due to this effect.[9]

While PCSK9 inhibitors, high dose atorvastatin, ezetimibe and niacin have resulted in significant reductions in Lp(a),[10–12] lifestyle interventions have not reliably demonstrated reduced Lp(a) to a clinically significant degree. Interestingly, even high saturated fat and high cholesterol diets known to induce hypercholesterolemia have had little influence on plasma Lp(a) concentrations.[13] Despite the lack of evidence in the literature indicating a relationship between diet and Lp(a) concentrations, a defined, plant-based has not been previously evaluated with respect to its potential effect to reduce Lp(a). Previous investigations have found that a very-high fiber diet comprised of vegetables, fruits and nuts can reduce LDL-C by 33% and Apo-B by 26%,[14] although Lp(a) was not measured. Since such a diet can result in dramatic reductions in LDL-C and Apo-B, secondary analysis of a previously published investigation[15] employing a similar plant-based diet were analyzed to evaluate if Lp(a) could be significantly reduced after 4 weeks among other inflammatory indicators and atherogenic lipoproteins and particles.

2 | METHODS

2.1 | Study population

Participants were subjects of a previous study in which written informed consent was obtained to draw blood for analysis.[15] Laboratory reports for each subject included biomarkers used for clinical purposes, and selected biomarkers are included in the present investigation. The study protocol was approved by the Texas Woman's University Institutional Review Board, Houston.

The study protocol has been previously described.[15] Briefly, all participants were registered new patients of a cardiovascular center and were hypertensive (systolic blood pressure ≥ 140 mmHg or diastolic blood pressure ≥ 90 mmHg), had elevated LDL-C (≥100 mg/dL) and excess body weight (body mass index ≥25 kg/m^2) at baseline. Exclusionary criteria included current tobacco use, current drug abuse, excessive alcohol use (>2 glasses of wine or equivalent for men or > 1 glass of wine or equivalent for woman), a current cancer diagnosis, an ongoing clinically defined infection, a mental disability that would prevent a participant from following the study protocol, an estimated glomerular filtration rate < 60 mg/dL, current pregnancy or lactation, a hospitalization within the past 6 months, and previous exposure to the nutrition program.

2.2 | Intervention

Participants were instructed to consume a defined, plant-based diet for 4 weeks ad-libitum which included the consumption of foods within a food classification system.[15] These foods fell within food levels 0 to 4b of the food classification system (Table S1, Supporting information). Briefly, excluded were animal products, cooked foods, free oils, soda, alcohol, and coffee. Allowed for consumption were raw fruits, vegetables, seeds, and avocado. Small amounts of raw buckwheat and oats were also permitted. Vitamin, herbal, and mineral supplements were to be discontinued unless otherwise clinically indicated. All meals and snacks were provided to subjects, although they were free to consume food on their own within food levels 0 to 4b. In addition, subjects were not advised to alter their exercise habits. Adherence was measured daily as previously described[15] with an adherence assessment tool. Participants indicated in writing each day whether they were adherent. Dietary recalls (24-hour) were conducted by a trained nutritionist at baseline and at 4 weeks. Nutrient intake was analyzed by the Nutrition Data System for Research software (University of Minnesota, version 2016). No lipid lowering medications were altered throughout the intervention.

2.3 | Measures

After a 12-hour fast, the following plasma biomarkers were obtained at baseline and after 4-weeks: total cholesterol (Total-C), LDL-C, high-density lipoprotein cholesterol (HDL-C), triglycerides, LDL particles (LDL-P), small-dense low-density lipoprotein cholesterol (sdLDL-C), Apo-B, high-density lipoprotein 2 cholesterol (HDL2-C), apolipoprotein A-1 (Apo A-1), and Lp(a). Additionally, high-sensitivity c-reactive protein (*hs*-CRP), endothelin, interleukin-6 (IL-6), tumor necrosis factor alpha (TNF-a), lipoprotein-associated phospholipase A2 (Lp-PLA2), myeloperoxidase, fibrinogen, troponin-I, N-terminal pro b-type natriuretic peptide (NT-proBNP), total white blood cell count (WBC), neutrophil count, lymphocyte count, monocyte count, eosinophil count, and basophil count were documented. These specific biomarkers of interest were analyzed by either True Health Diagnostics (Frisco, Texas) or Singulex (Alameda, California) depending on the subject's health insurance. The same company that analyzed the baseline labs for a participant was used for the follow-up labs to ensure consistency.

2.4 | Data analysis

Paired samples t-tests were used for the analysis of biochemical measures at baseline and 4-weeks, and significance was confirmed with non-parametric tests. Significance was determined to be a P value less than 0.05. SPSS (version 24) was used for data analysis.

3 | RESULTS

Baseline demographics are indicated in Table 1. Subjects represent a sample that was 81% obese with multiple clinical diagnoses. Two-thirds of subjects were women and 80% were African American.

Adherence to the dietary intervention was approximately 87% over the course of the 4 weeks as measured by the daily adherence assessment tool. Food group consumption is indicated in Table 2 at baseline and 4-weeks. Notably, total fruit consumption increased from 1.3 ± 2.0 servings to 11.8 ± 10.4 servings (808% increase, $P < 0.0005$) and total vegetable consumption increased 2.7 ± 2.0 servings to 16.0 ± 9.2 servings (493% increase, $P < 0.0005$). Additionally, total animal product consumption decreased from 7.9 ± 4.7 servings to 0.4 ± 1.4 servings (95% decrease, $P = 0.001$). The consumption of avocados, dark-green vegetables, deep-yellow vegetables, tomatoes,

TABLE 1 Baseline characteristics and clinical diagnoses

	Participants[a]
n	31
Age (years)	53.4 (32-69)
Sex	
Male	10 (33%)
Female	21 (67%)
Race, ethnicity	
African American	25 (80%)
Hispanic	3 (10%)
White	3 (10%)
Mean BMI (kg/m^2)	37.5 ± 8.3
Overweight (25-29.9 kg/m^2)	6 (19%)
Obesity class 1 (30-34.9 kg/m^2)	6 (19%)
Obesity class 2 (35-39.9 kg/m^2)	10 (33%)
Obesity class 3 (≥40 kg/m^2)	9 (29%)
Current diagnoses	
Coronary artery disease	10 (33%)
Type II diabetes mellitus	8 (27%)
Arthritic condition	7 (23%)
Pre-diabetes	5 (17%)

Abbreviation: BMI, body mass index.
[a] Data are mean (range) unless otherwise indicated.

and other vegetables also significantly increased ($P \leq 0.006$). A decreased consumption of white potatoes, fried potatoes, total grains, refined grains, whole grains, added oils, added animal fat, red meat, white meat, eggs, and dairy were also observed ($P \leq 0.027$). The consumption of sweets (5% decrease, $P = 0.90$) and the consumption of nuts/seeds (17% increase, $P = 0.736$) did not significantly change between baseline and 4-weeks.

Body weight, BMI, total cholesterol, LDL-C, HDL-C, and triglycerides (Table 3) were significantly reduced after 4-weeks of the dietary intervention ($P \leq 0.008$). Lp(a) was also significantly reduced (−32.0 ± 52.3 nmol/L, $P = 0.003$). In addition, LDL-P, sdLDL-C, Apo-B, HDL2-C, and Apo A-1 were significantly reduced ($P \leq 0.03$). Of the atherogenic lipoproteins, sdLDL-C had the greatest relative reduction of approximately 30% (Figure 1). Lp(a) reduced 16% which was proportional to the decrease in Total-C, triglycerides and LDL-P.

Of the inflammatory indicators, *hs*-CRP, IL-6, Lp-PLA2, and fibrinogen significantly decreased ($P \leq 0.004$) (Table 4). The WBC, neutrophil, lymphocyte, monocyte, eosinophil and basophil count also significantly decreased ($P \leq 0.033$). Interestingly, no statistically significant changes were observed for endothelin-1, TNF-a, myeloperoxidase, troponin-I, or NT-proBNP ($P \geq 0.056$) between baseline and 4-weeks.

TABLE 2 Number of food group servings at baseline and 4-weeks[a]

Food group	Serving size	Baseline[b]	Final[b]	Change[c]	*P*[d]
Fruits, total	1/2 cup chopped, 1/4 cup dried or 1 medium piece	1.3 ± 2.0	11.8 ± 10.4	808% (10.5 ± 10.8)	<0.0005
Avocado	1/2 cup chopped	0.1 ± 0.2	0.9 ± 0.9	800% (0.8 ± 0.9)	<0.0005
Vegetables, Total	1/2 cup chopped or 1 cup raw leafy	2.7 ± 2.0	16.0 ± 9.2	493% (13.3 ± 9.2)	<0.0005
Dark-green vegetables	1/2 cup chopped or 1 cup raw leafy	0.7 ± 1	5.2 ± 3.8	643% (4.5 ± 4.0)	<0.0005
Deep-yellow vegetables	1/2 cup chopped	0.2 ± 0.4	1.2 ± 1.1	500% (1.0 ± 1.3)	<0.0005
Tomatoes	1/2 cup chopped	0.4 ± 0.5	1.7 ± 2.4	325% (1.3 ± 2.4)	0.006
Other vegetables	1/2 cup chopped	1.4 ± 1.2	7.9 ± 6.6	464% (6.5 ± 6.3)	<0.0005
White Potatoes[e]	1/2 cup chopped or 1 medium baked potato	0.3 ± 0.7	0.0 ± 0.0	−100% (−0.3 ± 0.7)	0.03
Fried potatoes	1/2 cup chopped or 70 g french fries	0.5 ± 0.9	0.1 ± 0.3	−80% (−0.4 ± 0.9)	0.027
Grains, Total	1 slice of bread or halfcup cooked cereal	5.7 ± 3.5	0.7 ± 0.9	−88% (−5.0 ± 3.6)	<0.0005
Refined grains	1 slice of bread or half cup cooked cereal	3.8 ± 2.7	0.2 ± 0.7	−95% (−3.6 ± 3.0)	<0.0005
Whole grains	1 slice of bread or half cup cooked cereal	1.9 ± 2.6	0.5 ± 0.7	−74% (−1.4 ± 2.7)	0.007
Sweets[f]	4 g of sugar, 1 tbsp honey or 2 tbsp syrup	1.8 ± 2.3	1.7 ± 1.5	−5% (−0.1 ± 2.7)	0.90
Nuts/seeds	1/2 oz	1.2 ± 3.0	1.4 ± 1.6	17% (0.2 ± 3.4)	0.736
Added oils	1 tsp	3.2 ± 3.5	0.1 ± 0.2	−97% (−3.1 ± 3.5)	<0.0005
Added animal fat	1 tsp	1.3 ± 2.3	0.0 ± 0.1	−100% (−1.3 ± 2.3)	0.005
Animal products, Total[g]	1 oz	7.9 ± 4.7	0.4 ± 1.4	−95% (−7.5 ± 5.3)	0.001
Red meat	1 oz	2.1 ± 2.9	0.1 ± 0.2	−95% (−2.0 ± 3.0)	<0.0005
White meat	1 oz	3.9 ± 3.7	0.2 ± 1.1	−95% (−3.7 ± 4.1)	<0.0005
Eggs	1 large egg	0.5 ± 0.7	0.0 ± 0.1	−100% (−0.5 ± 0.7)	0.002
Dairy	1 cup of milk/yogurt or 1.5 oz of cheese	1.5 ± 1.6	0.1 ± 0.3	−93% (−1.4 ± 1.7)	<0.0005

[a] Data are for subjects who completed 24-h recalls at both baseline and 4-weeks ($n = 30$).
[b] Data are listed in serving size and are presented as mean ± SD.
[c] Data indicated as % change (mean ± SD).
[d] Paired samples *t*-tests for within-group comparisons of changes from baseline to final values.
[e] Excludes fried potatoes.
[f] Includes honey, candy, or other added sugars.
[g] Excludes added animal fat.

TABLE 3 Atherogenic lipoproteins and particles at baseline and 4-weeks

	Baseline[a]	Final[a]	Change[b]	P[c]
Weight (kg)	108.1 ± 28.6	101.4 ± 26.3	−6% (−6.6 ± 3.6)	<0.0005
BMI (kg/m^2)	37.5 ± 8.3	35.2 ± 7.8	−6% (−2.2 ± 1.1)	<0.0005
Total-C (mg/dL)	216.6 ± 34.2	182.7 ± 29.9	−16% (−33.8 ± 25.9)	<0.0005
LDL-C (mg/dL)	143.0 ± 28.9	118.4 ± 26.4	−17% (−24.6 ± 21.3)	<0.0005
HDL-C (mg/dL)	54.8 ± 9.4	49.5 ± 10.6	−9% (−5.2 ± 6.2)	<0.0005
Triglycerides (mg/dL)	124.1 ± 58.1	104.5 ± 53.6	−16% (−19.6 ± 38.4)	0.008
Lp(a) (nmol/L)[d]	200.7 ± 150.0	168.8 ± 126.7	−16% (−32.0 ± 52.3)	0.003
Apo-B (mg/dL)	115.2 ± 24.5	101.9 ± 17.7	−11% (−13.3 ± 18.3)	<0.0005
LDL-P (nmol/L)[e]	1891 ± 586	1586 ± 508	−16% (−305 ± 363)	<0.0005
*sd*LDL-C (mg/dL)	33.7 ± 11.5	23.7 ± 8.7	−30% (−10.0 ± 9.2)	<0.0005
HDL2-C (mg/dL)	17.4 ± 9.8	15.6 ± 9.9	−10% (−1.8 ± 4.5)	0.030
Apo A-1 (mg/dL)	189.7 ± 150.7	160.2 ± 126.5	−14% (−27.0 ± 19.6)	<0.0005

Abbreviations: Apo A-1, apolipoprotein A-1; Apo-B, apolipoprotein B100; BMI, body mass index; HDL-C, high-density lipoprotein cholesterol; HDL2-C, high-density lipoprotein-2 cholesterol; LDL-C, low-density lipoprotein cholesterol; LDL-P, low-density lipoprotein particles; Lp(a), lipoprotein(a); sdLDL-C, small-dense low-density lipoprotein cholesterol; total-C, total cholesterol.
[a] Mean ± SD (*n* = 31 unless otherwise indicated).
[b] Data indicated as % change (mean ± SD).
[c] Paired samples *t*-tests for within-group comparisons of changes from baseline to final values.
[d] *n* = 28 due to premature coagulation of sample (*n* = 1) and incompatible units (mg/dL) when merging laboratory results (*n* = 2).
[e] *n* = 29 due to premature coagulation of samples.

4 | DISCUSSION

The consumption of a defined, plant-based diet resulted in a significant reduction in Lp(a) after 4 weeks; thus, the study hypothesis was accepted. The reduction in Lp(a) was profound and is one of the largest reductions due to lifestyle reported in the literature. The magnitude of change was comparable to other leading medical therapies, such as niacin (~20% reduction) and PCSK9 inhibitors (~25% reduction).[12] It is important to note that this dietary intervention rapidly reduced Lp(a) by 16% in only 4 weeks, whereas shorter duration niacin and PCSK9 inhibitor drug trials typically lasted 8 to 12 weeks. It should also be noted that niacin may reduce inflammation, such as *hs*-CRP, by 15% after 3 months, although PCSK9 inhibitors do not.[16,17] After 4 weeks, the dietary intervention reduced *hs*-CRP by 30.7%. In addition, IL-6, Lp-PLA2, fibrinogen, and white blood cells were significantly reduced, as were sdLDL-C, LDL-P, and Apo-B, all of which represent a systemic, cardio-protective effect.[18–24] Thus, the use of this single dietary approach in the clinical setting, vs multiple drug therapy, may be an appropriate tool in treating complex patients with a myriad of elevated CVD-related biomarkers.

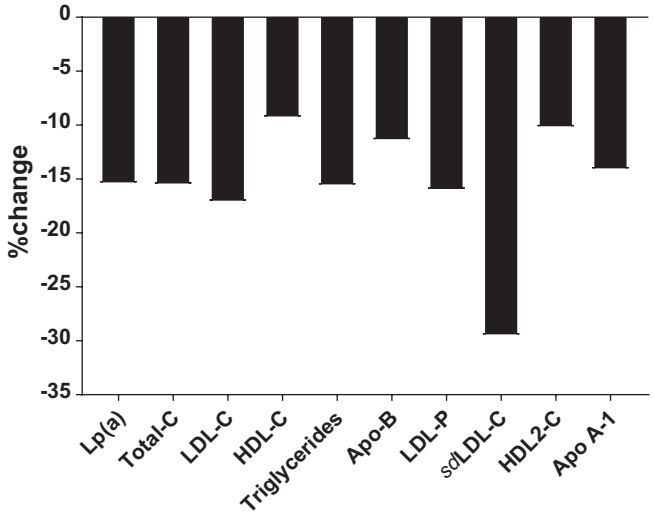


FIGURE 1 Percent change of atherogenic lipoproteins and particles from baseline to 4-weeks. All variable changes indicated are significant ($P < 0.05$). Lp(a), lipoprotein(a); Total-C, total cholesterol; LDL-C, low-density lipoprotein cholesterol; HDL-C, high-density lipoprotein cholesterol; Apo-B, apolipoprotein B100; LDL-P, low-density lipoprotein particles; sdLDL-C, small-dense low-density lipoprotein cholesterol; HDL2-C, high-density lipoprotein-2 cholesterol; Apo A-1, apolipoprotein A-1

Elevated Apo A1, HDL-C, and HDL2-C are associated with reduced cardiovascular disease risk.[24,25] While these HDL fractions were significantly reduced in this trial, this is a common phenomenon observed when consuming plant-based diets. A systematic review and meta-analysis of plant-based observational and clinical trials found that while HDL-C was significantly reduced compared to those consuming non-vegetarian diets, LDL-C and total-C were also reduced.[26] Despite reductions in HDL-C, those who consumed plant-based diets had a 25% reduced incidence of ischemic CVD compared with non-vegetarian counterparts.[27]

Lp(a) concentrations in the present study represent a high-risk population.[28] This may be explained by the higher proportion of African Americans in this sample, as African Americans may have higher Lp(a) concentrations compared with Caucasians.[29] An evaluation of 532 359 patients found that an Lp(a) concentration > 50 mg/dL was common among patients.[30] This range roughly corresponds to the mean nmol/L Lp(a) concentration observed in the present study.

4.1 | Effect of weight loss on plasma Lp(a) concentrations

An energy restricted diet was found to independently reduce serum Lp(a) in those with baseline concentrations >20 mg/dL, but not <20 mg/dL.[31] Further studies have found that weight loss may not

TABLE 4 Inflammatory and other cardiovascular indicators at baseline and 4-weeks

	Baseline[a]	Final[a]	Change[b]	*P*[c]
hs-CRP (mg/dL)	7.8 ± 6.4	5.4 ± 4.7	−30.7% (−2.4 ± 3.7)	0.001
Endothelin (pg/mL)[d]	2.2 ± 0.7	2.2 ± 0.8	0% (0.0 ± 0.7)	0.916
IL-6 (pg/mL)[d]	2.6 ± 1.4	2.0 ± 1.0	−23.1% (−0.6 ± 1.0)	0.001
TNF-α (pg/mL)[d]	2.0 ± 0.9	2.2 ± 0.9	10.0% (0.2 ± 0.6)	0.096
Lp-PLA_2 (ng/mL)[d]	252.3 ± 136.3	210.7 ± 119.1	−16.4% (−41.6 ± 64.6)	0.001
Myeloperoxidase (pmol/L)[e]	124.1 ± 58.1	104.5 ± 53.6	−23.0% (−28.5 ± 66.1)	0.056
Fibrinogen (mg/dL)[f]	561.4 ± 112.2	530.1 ± 102.9	−5.6% (−31.3 ± 50.7)	0.004
NT-proBNP (pg/mL)[d]	65.2 ± 71.2	69.4 ± 75.9	6.2% (4.1 ± 23.2)	0.337
Total WBC (K/μL)[d]	6.3 ± 2.0	4.8 ± 1.3	−22.2% (−1.4 ± 1.1)	<0.0005
Neutrophils (K/μL)[d]	3.5 ± 1.4	2.5 ± 0.9	−28.6% (−1.0 ± 0.8)	<0.0005
Lymphocytes (K/μL)[d]	1.9 ± 0.7	1.6 ± 0.6	−15.8% (−0.3 ± 0.4)	<0.0005
Monocytes (K/μL)[d]	0.46 ± 0.12	0.38 ± 0.09	−15.2% (−0.07 ± 0.1)	<0.0005
Eosinophils (K/μL)[d]	0.18 ± 0.11	0.15 ± 0.11	−16.6% (−0.03 ± 0.07)	0.033
Basophils (K/μL)[d]	0.029 ± 0.016	0.024 ± 0.015	−17.2% (−0.005 ± 0.010)	0.016

Abbreviations: *hs*-CRP, high-sensitivity c-reactive protein; IL-6, interleukin-6; Lp-PLA_2, lipoprotein-associated phospholipase A2; NT-proBNP, N-terminal pro b-type natriuretic peptide; TNF-α, tumor necrosis factor-alpha; WBC, white blood cells.
[a] Mean ± SD (*n* = 31 unless otherwise indicated).
[b] Data indicated as % change (mean ± SD).
[c] Paired samples *t*-tests for within-group comparisons of changes from baseline to final values.
[d] *n* = 30 due to premature coagulation of samples.
[e] *n* = 25 due to premature coagulation of samples.
[f] *n* = 27 due to premature coagulation of samples.

independently reduce Lp(a) concentrations. A pooled analysis of cohorts found that as weight loss ensued, Lp(a) concentrations surprisingly increased.[32] Baseline Lp(a) concentrations on average between the four cohorts analyzed were approximately 40 mg/dL, well above the >20 mg/dL threshold reported in the initial study.[31] Other investigations examining the effect of weight loss on Lp(a) concentration have not demonstrated a relationship between these two variables.[33,34] Interestingly, the emphasis on consuming plant-based foods, even with a calorie restricted diet, did not result in Lp(a) reductions compared with a calorie restricted red meat centered diet.[35] The plant-centered diet in this trial[35] still contained a significant number of calories derived from animal-based sources in addition to processed plant foods. Also, both diets contained similar quantities of dietary fiber, a measure of plant-food intake. Based on these weight loss trials, Lp(a) concentration is likely not influenced by weight reduction.

4.2 | Effect of diet on plasma Lp(a) concentrations

Other trials using diets emphasizing plant-based foods have not demonstrated similar results. A low-fat and low-saturated fat diet with an increased intake of fruits and vegetables interestingly increased Lp(a) concentrations.[36] Subjects consumed four to five servings of fruits or berries and five to six servings of vegetables daily for 5 weeks and all food was provided. It is important to note that subjects still consumed animal products throughout the intervention[36] which included dairy products and lean meats. The fiber content (40 g vs 51 g in the present study) was not as high as would be expected when consuming a higher quantity of plant-foods, and the number of fruits and vegetables did not meet the levels observed in the present study (11.8 servings of fruits and 16 servings of vegetables). Based on this data, it is probable that exclusively increasing fruit and vegetable intake is not sufficient to elicit reduced Lp(a) concentrations.

It has also been reported that a low-carbohydrate, high-fat diet (45% carbohydrate, 40% fat) may have a favorable impact on Lp(a) concentrations compared with a high-carbohydrate, low-fat diet (65% carbohydrate, 20% fat), although it is unclear as to what precisely was consumed on either of these diets.[37] In addition, the differences were small, as only a 2.17 mg/dL difference was observed between both groups, and baseline Lp(a) concentrations were <20 mg/dL. The Omni Heart Trial also found that replacing calories from carbohydrates and protein with unsaturated fats produced a smaller increase in Lp(a) comparatively, but both diets still elicited increased plasma Lp(a) compared with baseline. The differences between groups were also small at the end of the intervention (<4 mg/dL difference).[38]

In individuals with low baseline Lp(a) concentrations (approximately 5.5 mg/dL), the consumption of copious saturated fat, cholesterol (derived from egg consumption) and polyunsaturated fat did not influence Lp(a) concentrations.[13] Carbohydrate intake was low in this trial as well (39% to 46% carbohydrate as a percent of energy). While fat consumption does not appear to influence serum Lp(a) concentrations in the fasting state, a variety of fats may significantly increase postprandial, transient plasma Lp(a) concentrations over the course of 8 hours.[39] Investigators found that linoleic, oleic, palmitic, and stearic acid all resulted in significant transient increases in Lp(a) concentrations which closely tied to a proportional increase in triacylglycerol concentrations. While saturated fats, stearic acid and palmitic acid, appeared to have the greatest increase in serum Lp(a) compared with oleic acid and linoleic acid, this differing response did not reach statistical significance.

4.3 | Mechanisms contributing to reduced plasma Lp(a)

The observed reduction in Lp(a) in the present study may be due to decreased hepatic synthesis of apolipoprotein(a) and Apo-B. This may be in part due to decreased expression of the LPA gene. Since the LPA gene is almost exclusively expressed in the liver,[40] hepatic influences, including the production of *hs*-CRP and inflammatory cytokines, such as IL-6, may upregulate LPA gene expression.[41] Indeed, those with inflammatory conditions may have increased Lp(a) concentrations compared with healthy controls.[42]

Current data in our plant-based study supports this hypothesis, as reduced *hs*-CRP and IL-6 was observed. In contrast, previous studies utilizing plant-centered diets to reduce Lp(a) were unsuccessful, as animal products were still substantially consumed.[35,36] Animal-based foods, including lean meat, can induce a postprandial inflammatory response, including increased *hs*-CRP and IL-6.[43] Pooled data of those consuming non-vegan, plant-based diets have shown reduced *hs*-CRP and IL-6,[44] although to a lesser extent compared with the present study (*hs*-CRP; −0.55 mg/dL vs −2.42 mg/dL, IL-6; −0.25 pg/mL vs −0.64 pg/mL). The elimination of animal products and processed foods completely on a defined, plant-based diet may be a more prudent dietary strategy to avoid potential fluctuations in inflammation. Thus, the fact that there were only minimally processed plant foods consumed during this dietary intervention may account for the observed reduction in serum Lp(a) concentrations that may be associated with reduced LPA gene expression. Further mechanistic research is needed to confirm this hypothesis.

4.4 | Strengths and limitations

The high dietary adherence and provision of all food to subjects supports the conclusion that the intervention likely fully accounted for the observed biochemical changes among the subjects. Furthermore, the study took place in an outpatient clinical setting with established patients providing a real-world example of a standard clinical practice. This study provides a model for the implementation of this intervention across other medical practices. In contrast, a limitation in the design of this study was the lack of a control group and the small sample size. A larger sample size and a control group would be needed to strengthen a causal relationship.

5 | CONCLUSION

A defined, plant-based diet has a favorable impact on Lp(a) and other atherogenic lipoproteins and particles. Lp(a) concentration was previously thought to be only minimally altered by lifestyle interventions. In this study, however, a defined plant-based diet resulted in a substantial reduction in Lp(a) in only 4 weeks. Further investigations are warranted to elucidate the specific mechanisms that contribute to reduced Lp(a) concentrations, which may include alterations in LPA gene expression mediated via hepatic inflammation.

ACKNOWLEDGMENTS

We would like to thank The Garden Kitchen (Houston, Texas) for providing the food to the subjects. This study was funded by the Johnsie and Aubary Montgomery Institute of Medical Education and Research.

Conflict of interest

The authors declare no potential conflicts of interest.

ORCID

Rami S. Najjar http://orcid.org/0000-0001-5348-3008

REFERENCES

1. Gaubatz JW, Chari MV, Nava ML, Guyton JR, Morrisett JD. Isolation and characterization of the two major apoproteins in human lipoprotein. *J Lipid Res*. 1987;28(1):69-79.
2. Frank S, Durovic S, Kostner GM. The assembly of lipoprotein Lp(a). *Eur J Clin Investig*. 1996;26:109-114.
3. Boerwinkle E, Leffert CC, Lin J, Lackner C, Chiesa G, Hobbs HH. Apolipoprotein(a) gene accounts for greater than 90% of the variation in plasma lipoprotein(a) concentrations. *J Clin Invest*. 1992;90(1):52-60. https://doi.org/10.1172/JCI115855.
4. Emerging Risk Factors Collaboration et al. Lipoprotein(a) concentration and the risk of coronary heart disease, stroke, and nonvascular mortality. *JAMA*. 2009;302:412-423. https://doi.org/10.1001/jama.2009.1063.
5. Clarke R, Peden JF, Hopewell JC, et al. Genetic variants associated with Lp(a) lipoprotein level and coronary disease. *N Engl J Med*. 2009;361:2518-2528. https://doi.org/10.1056/NEJMoa0902604.
6. Riches K, Porter KE. Lipoprotein(a): cellular effects and molecular mechanisms. *Cholesterol*. 2012;2012:923289.
7. Argraves KM, Kozarsky KF, Fallon JT, Harpel PC, Strickland DK. The atherogenic lipoprotein Lp(a) is internalized and degraded in a process mediated by the VLDL receptor. *J Clin Invest*. 1997;100(9):2170-2181. https://doi.org/10.1172/JCI119753.
8. Bergmark C, Dewan A, Orsoni A, et al. A novel function of lipoprotein [a] as a preferential carrier of oxidized phospholipids in human plasma. *J Lipid Res*. 2008;49:2230-2239.
9. Wu HD, Berglund L, Dimayuga C, et al. High lipoprotein(a) levels and small apolipoprotein(a) sizes are associated with endothelial dysfunction in a multiethnic cohort. *J Am Coll Cardiol*. 2004;43:1828-1833. https://doi.org/10.1016/j.jacc.2003.08.066.
10. Hernandez C, Francisco G, Ciudin A, et al. Effect of atorvastatin on lipoprotein (a) and interleukin-10: a randomized placebo-controlled trial. *Diabetes Metab*. 2011;37:124-130.
11. Nozue T, Michishita I, Mizuguchi I. Effects of ezetimibe on remnant-like particle cholesterol, lipoprotein (a), and oxidized low-density lipoprotein in patients with dyslipidemia. *J Atheroscler Thromb*. 2010;17(1):37-44.
12. van Capelleveen JC, van der Valk FM, Stroes ES. Current therapies for lowering lipoprotein (a). *J Lipid Res*. 2016;57:1612-1618.
13. Brown SA, Morrisett J, Patsch JR, Reeves R, Gotto AM Jr, Patsch W. Influence of short term dietary cholesterol and fat on human plasma Lp[a] and LDL levels. *J Lipid Res*. 1991;32:1281-1289.
14. Jenkins DJ, Kendall CW, Popovich DG, et al. Effect of a very-high-fiber vegetable, fruit, and nut diet on serum lipids and colonic function. *Metabolism*. 2001;50:494-503.
15. Najjar RS, Moore CE, Montgomery BD. A defined, plant-based diet utilized in an outpatient cardiovascular clinic effectively treats hypercholesterolemia and hypertension and reduces medications. *Clin Cardiol*. 2018;41:307-313. https://doi.org/10.1002/clc.22863.
16. Sahebkar A, Di Giosia P, Stamerra CA, et al. Effect of monoclonal antibodies to PCSK9 on high-sensitivity C-reactive protein levels: a meta-analysis of 16 randomized controlled treatment arms. *Br J Clin*

Pharmacol. 2016;81(6):1175-1190. https://doi.org/10.1111/bcp.12905.
17. Kuvin JT, Dave DM, Sliney KA, et al. Effects of extended-release niacin on lipoprotein particle size, distribution, and inflammatory markers in patients with coronary artery disease. *Am J Cardiol*. 2006;98:743-745.
18. Vittos O, Toana B, Vittos A, Moldoveanu E. Lipoprotein-associated phospholipase A2 (LpPLA2): a review of its role and significance as a cardiovascular biomarker. *Biomarkers*. 2012;17:289-302.
19. Madjid M, Fatemi O. Components of the complete blood count as risk predictors for coronary heart disease: in-depth review and update. *Tex Heart Inst J*. 2013;40:17-29.
20. Emerging Risk Factors Collaboration et al. C-reactive protein, fibrinogen, and cardiovascular disease prediction. *N Engl J Med*. 2012;367:1310-1320. https://doi.org/10.1056/NEJMoa1107477.
21. Danesh J, Kaptoge S, Mann AG, et al. Long-term interleukin-6 levels and subsequent risk of coronary heart disease: two new prospective studies and a systematic review. *PLoS Med*. 2008;5:e78. https://doi.org/10.1371/journal.pmed.0050078.
22. Cromwell WC, Otvos JD, Keyes MJ, et al. LDL particle number and risk of future cardiovascular disease in the Framingham offspring study—implications for LDL management. *J Clin Lipidol*. 2007;1:583-592.
23. Austin MA, Breslow JL, Hennekens CH, Buring JE, Willett WC, Krauss RM. Low-density lipoprotein subclass patterns and risk of myocardial infarction. *JAMA*. 1988;260:1917-1921.
24. Walldius G, Jungner I, Holme I, Aastveit AH, Kolar W, Steiner E. High apolipoprotein B, low apolipoprotein A-I, and improvement in the prediction of fatal myocardial infarction (AMORIS study): a prospective study. *Lancet*. 2001;358:2026-2033. https://doi.org/10.1016/S0140-6736(01)07098-2.
25. Williams PT, Feldman DE. Prospective study of coronary heart disease vs. HDL2, HDL3, and other lipoproteins in Gofman's Livermore cohort. *Atherosclerosis*. 2011;214(1):196-202. https://doi.org/10.1016/j.atherosclerosis.2010.10.024.
26. Yokoyama Y, Levin SM, Barnard ND. Association between plant-based diets and plasma lipids: a systematic review and meta-analysis. *Nutr Rev*. 2017;75:683-698.
27. Dinu M, Abbate R, Gensini GF, Casini A, Sofi F. Vegetarian, vegan diets and multiple health outcomes: a systematic review with meta-analysis of observational studies. *Crit Rev Food Sci Nutr*. 2017;57:3640-3649. https://doi.org/10.1080/10408398.2016.1138447.
28. Nordestgaard BG, Chapman MJ, Ray K, et al. Lipoprotein(a) as a cardiovascular risk factor: current status. *Eur Heart J*. 2010;31:2844-2853. https://doi.org/10.1093/eurheartj/ehq386.
29. Guyton JR, Dahlen GH, Patsch W, Kautz JA, Gotto AM. Relationship of plasma lipoprotein Lp(a) levels to race and to apolipoprotein B. *Arteriosclerosis*. 1985;5:265-272.
30. Varvel S, McConnell JP, Tsimikas S. Prevalence of elevated Lp(a) mass levels and patient thresholds in 532 359 patients in the United States. *Arterioscler Thromb Vasc Biol*. 2016;36:2239-2245. https://doi.org/10.1161/ATVBAHA.116.308011.
31. Kiortsis DN, Tzotzas T, Ciral P, et al. Changes in lipoprotein(a) levels and hormonal correlations during a weight reduction program. *Nutr Metab Cardiovasc Dis*. 2001;11:153-157.
32. Berk KA, Yahya R, Verhoeven AJM, et al. Effect of diet-induced weight loss on lipoprotein(a) levels in obese individuals with and without type 2 diabetes. *Diabetologia*. 2017;60(6):989-997. https://doi.org/10.1007/s00125-017-4246-y.
33. Corsetti JP, Sterry JA, Sparks JD, Sparks CE, Weintraub M. Effect of weight loss on serum lipoprotein(a) concentrations in an obese population. *Clin Chem*. 1991;37:1191-1195.
34. Woodard GA, Peraza J, Bravo S, Toplosky L, Hernandez-Boussard T, Morton JM. One year improvements in cardiovascular risk factors: a comparative trial of laparoscopic roux-en-Y gastric bypass vs. adjustable gastric banding. *Obes Surg*. 2010;20:578-582. https://doi.org/10.1007/s11695-010-0088-0.
35. Yamashita T, Sasahara T, Pomeroy SE, Collier G, Nestel PJ. Arterial compliance, blood pressure, plasma leptin, and plasma lipids in women are improved with weight reduction equally with a meat-based diet and a plant-based diet. *Metabolism*. 1998;47:1308-1314. https://doi.org/10.1016/S0026-0495(98)90297-9.
36. Silaste ML, Rantala M, Alfthan G, et al. Changes in dietary fat intake alter plasma levels of oxidized low-density lipoprotein and lipoprotein. *Arterioscler Thromb Vasc Biol*. 2004;24:498-503.
37. Faghihnia N, Tsimikas S, Miller ER, Witztum JL, Krauss RM. Changes in lipoprotein(a), oxidized phospholipids, and LDL subclasses with a low-fat high-carbohydrate diet. *J Lipid Res*. 2010;51:3324-3330. https://doi.org/10.1194/jlr.M005769.
38. Haring B, von Ballmoos MC, Appel LJ, Sacks FM. Healthy dietary interventions and lipoprotein (a) plasma levels: results from the Omni heart trial. *PLoS One*. 2014;9:e114859.
39. Tholstrup T, Samman S. Postprandial lipoprotein(a) is affected differently by specific individual dietary fatty acids in healthy young men. *J Nutr*. 2004;134:2550-2555.
40. McLean JW, Tomlinson JE, Kuang WJ, et al. cDNA sequence of human apolipoprotein(a) is homologous to plasminogen. *Nature*. 1987;330(6144):132-137. https://doi.org/10.1038/330132a0.
41. Müller N, Schulte DM, Türk K, et al. IL-6 blockade by monoclonal antibodies inhibits apolipoprotein (a) expression and lipoprotein (a) synthesis in humans. *J Lipid Res*. 2015;56:1034-1042.
42. Missala I, Kassner U, Steinhagen-Thiessen E. A systematic literature review of the association of lipoprotein(a) and autoimmune diseases and atherosclerosis. *Int J Rheumatol*. 2012;2012:480784-480710. https://doi.org/10.1155/2012/480784.
43. Arya F, Egger S, Colquhoun D, Sullivan D, Pal S, Egger G. Differences in postprandial inflammatory responses to a 'modern' v. Traditional meat meal: a preliminary study. *Br J Nutr*. 2010;104(05):724-728. https://doi.org/10.1017/S0007114510001042.
44. Eichelmann F, Schwingshackl L, Fedirko V, Aleksandrova K. Effect of plant-based diets on obesity-related inflammatory profiles: a systematic review and meta-analysis of intervention trials. *Obes Rev*. 2016;17(11):1067-1079. https://doi.org/10.1111/obr.12439.

SUPPORTING INFORMATION

Additional supporting information may be found online in the Supporting Information section at the end of the article.

How to cite this article: Najjar RS, Moore CE, Montgomery BD. Consumption of a defined, plant-based diet reduces lipoprotein(a), inflammation, and other atherogenic lipoproteins and particles within 4 weeks. *Clin Cardiol*. 2018;1–7. https://doi.org/10.1002/clc.23027

AFFIDAVIT OF BRUCE MILLER M.S. CIH

STATE OF IDAHO)
) ss.
COUNTY OF BONNEVILLE)

BRUCE MILLER, being first duly sworn on oath, deposes and declares as follows:

1. I am above the age of 18 and am competent to make this affidavit.
2. I am a Board-Certified Industrial Hygienist (CIH) through the American Board of Industrial Hygiene, with a Master's Degree in Industrial Hygiene from Central Missouri State University, and I received my BS in Industrial Technology from Southern Illinois University with an A.A.S. in Bioenvironmental Engineering Technology,
3. I am President and owner of Health & Safety Services, LLC with more than 33 years of experience in comprehensive health and safety practice specializing in conducting retrospective exposure assessments for Department of Energy workers for Employees Occupational Illness Compensation Program (EEOICP) and Hanford Presumptive Claims, Occupational Safety and Health Administration (OSHA) General Industry (29 CFR 1910) and Construction (29 CFR 1926) compliance, and developing workplace exposure assessment tools and controls for environmental remediation, construction, demolition, water damage/mold projects.
4. I have managed and supervised health, safety, and health physics personnel and provided project management, planning, regulatory support, and oversight to numerous environmental remediation, waste management, construction, decontamination and decommissioning, and microbial and indoor air quality investigations, and remediation projects.

5. I have served as the Chair of the American Industrial Hygiene Association (AIHA) Law Committee, Consultants Special Interest Committee, and member of the Indoor Environmental Air and Environmental Affairs Committees.

6. My compete Curriculum Vitae is attached as **Exhibit A** and details my knowledge, skills and experiences.

7. Specifically, I have knowledge and experience with the OSHA regulations and compliance and applied experience writing, implementing and auditing OSHA 29 CFR 1910.132, "Personal Protective Equipment" and 29 CFR 1910.134, "Respiratory Protection" programs and implementing procedures to mitigate risks associated with hazardous agents and infectious diseases; I have conducted compliance inspections of hospitals and reviewed infectious prevention and control programs to verify safe healthcare work environments and best practices.

8. In preparation for providing my opinions herein, I have reviewed the New York State Department of Health Covid Emergency Public Health Law 2.61 (Attached as **Exhibit 1)**, the New York City Department of Health Covid Emergency Public Health Emergency Orders dated August 24, 2021, September 15, 2021, October 20, 2021 collectively attached as **Exhibit 2 (a)(b)(c)**, and I have reviewed the applicable regulations of the U.S. Department of Labor, Occupational Safety and Health Administration, along with documents of several New York hospitals' Covid-19 workplace program policies, including the affidavits and documents provided by a certain class of New York healthcare workers, including the class represented by Plaintiff, Rachel Toussaint ("Healthcare Worker Class") against certain New York hospitals and on behalf of a certain class of New York City (NYC) government workers from various NYC agencies including the Department of Education, Department of Transportation, Department of Sanitation, NYC Central Administration, Department of Children's Services ("NYC Worker Class"), represented by the Plaintiff, Amour Bryan, a

remote teacher for the New York City Department of Education.

FACTUAL BACKGROUND

9. Based on my review of the claims of the Healthcare Worker Class and the NYC Worker Class, both classes of Plaintiffs allege that they submitted requests to their employer to be exempted from the Covid-19 vaccine requirement implemented by NYC and the State of New York for healthcare employers pursuant to Emergency Orders issued by the New York State and City Departments of Health.

10. Based on my knowledge and experience consulting as an Industrial Hygienist for more than 30 years, there has never been adult vaccine mandates created or authorized by emergency order or otherwise by state or federal health officials as an occupational health and safety risk mitigation tool or control method for the purpose of eliminating or reducing the hazards caused by airborne pathogens and, in particular, airborne communicable diseases during a pandemic or even during an epidemic.

11. All of the exemption requests by each Plaintiff member of both Classes were denied, despite the fact that many of the Plaintiffs already worked remotely and had no contact with the public or had no direct contact with children if they worked for the Department of Education. In some instances, healthcare workers who refused the vaccine requested to be provided with or be allowed to use Powered Air-Purifying Respirator (PAPR) to keep themselves and patients safe while they worked face-to-face with patients. PAPRs provide a high level of respiratory protection greater than an N95 respirator or tight-fitting air-purifying respirator (APR).

12. All members of both Classes were subsequently terminated from their jobs and removed from their work sites by their employers because they would not comply with the employers'

implementation of NYS DOH and NYC DOH vaccine orders adopted by the employers as part of their workplace safety program.

13. Hospitals are one of the most hazardous places to work. In 2016, U.S. hospitals recorded 228,200 work-related injuries and illnesses, a rate of 5.9 work-related injuries and illnesses for every 100 full-time employees. This is twice the rate for private industry as a whole (U.S. Bureau of Labor Statistics).

14. According to OSHA, healthcare workers face numerous serious safety and health hazards in the workplace. They include needlestick/sharps injuries, exposure to bloodborne pathogens and biological hazards, potential chemical and drug exposures, waste anesthetic gas exposures, infectious respiratory hazards (including SARS-CoV-2), ergonomic hazards from lifting and similar repetitive tasks involving immobile patients, laser hazards, workplace violence, hazards associated with laboratories, and radioactive material and x-ray hazards.[1]

15. The OSHA website on "Infectious Disease," which contains guidelines for the risk management and mitigation for specific infectious diseases, specifically states that healthcare workers are occupationally exposed to a variety of infectious diseases during the performance of their duties. The primary routes of infectious disease transmission in U.S. healthcare settings are contact, droplet, and airborne.[2]

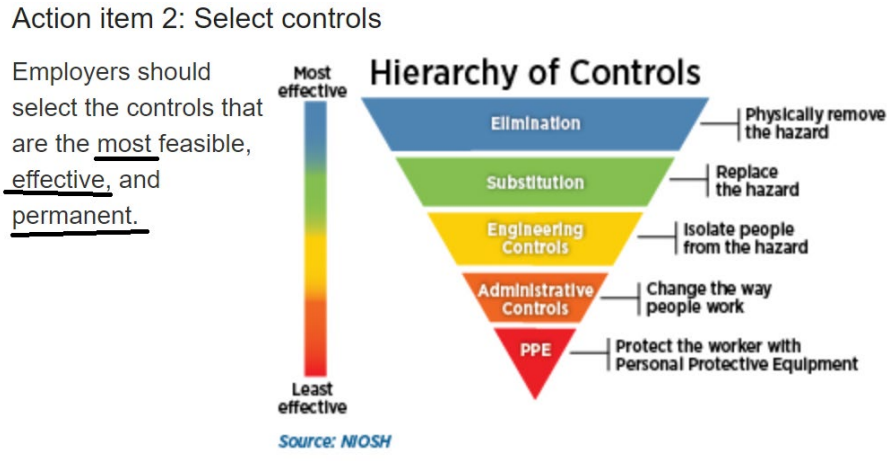
16. Since 1970, when OSHA was formed under the U.S. Department of Labor, it has been law that employers are specifically responsible and have a duty for providing a safe and healthful workplace for workers, specifically to prevent workplace severe injury and death. It is not the duty of employees to identify hazards, perform risk assessments and implement hazard controls to eliminate or reduce risks.

[1] See OSHA Healthcare Regulation Introduction. https://www.osha.gov/healthcare
[2] See OSHA Healthcare Infectious Diseases Guidelines - https://www.osha.gov/healthcare/infectious-diseases/

17. OSHA law expressly states that "the right to a safe workplace is a basic human right" and that "no worker should have to choose between their life and their job.[3] The OSHA regulations are applicable to most states in U.S. through the Approved State Plans, which includes New York.

18. OSHA regulations provides the minimum standards for employers to meet their duty to provide a safe workplace for their employees. In addition to specific OSHA standards, the general duty clause of the Occupational Safety and Health Act of 1970, 29 U.S.C. 654(a)(1), requires each employer to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

19. According to the OSHA "Recommended Practices for Safety and Health Programs", employers are required to select the hazard controls that are most feasible, effective and permanent, with a focus on first eliminating the hazard; and, if elimination is not possible, the below diagram illustrates the hierarchy of controls (also known as –"AKA" risk mitigations") that are to be used by employers which are the most effective alone or in combination that aids an employer in getting the closest to eliminating a hazard.[4]



[3] See "All About OSHA", U.S. Department of Labor OSHA Publication 3302-01R 2020. https://www.osha.gov/laws-regs/standardinterpretations/2011-08-05

[4] See OSHA Recommended Practices - https://www.osha.gov/safety-management/hazard-prevention

20. OSHA regulations specifically places the duty on the employers to identify and correct safety and health hazards in the workplace. This duty requires employers to first eliminate or reduce hazards by making feasible changes in working conditions, either through: 1) installation of workplace engineering controls, including but are not limited to installing ventilation systems to capture airborne particulates or aerosols, such as portable or fixed high-efficiency particulate air (HEPA) filtration systems, downdraft ventilation capture systems, and isolation of hazard sources with barriers to name a few, 2) implementing administrative controls, including, but are not limited to, changes to "how" an employee performs the essential functions of their job. Examples include training, limiting employee exposure time or location (which includes permitting remote work), screening to identify and isolate infectious patients, and other procedural requirements such as use of universal precautions, having infectious patients wear face masks, and posting hazard warning signs, and 3) providing personal protective equipment (PPE) where the workplace hazards cannot be controlled through engineering or administrative controls. Examples of PPE include, but are not limited to, protective clothing and gowns, gloves, face shields and goggles, respiratory protection, and hearing protection (hereafter collectively called "Risk Mitigation Tools)". PPE are to be used by the employer as a last line of defense when employee exposures cannot be reduced to an acceptable level using these other control methods.

21. OSHA Section 29 CFR 1910.132, Personal Protective Equipment, sets forth mandatory duties for all employers, including employers in the healthcare industry employees.

22. Employers are mandated under OSHA Personal Protective Equipment Standard, 29 CFR 1910.132, to conduct a hazard assessment to identify the hazards are present, or are likely to be present, which necessitate the use of PPE through a written hazard assessment.

23. Section 1910.132(d)(1)(i) specifically states:

"Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment."

24. Section 1910.132 1910.132(d)(2) specifically states:

"The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment."

25. This written hazard assessment is critical since it serves as the foundation for the selection of all PPE to be used by employees. Task and area-specific hazards should be evaluated within the hazard assessment so the selected PPE is tailored to the specific hazards, areas, and employee duties.

26. OSHA 29 CFR 1910.134, Respiratory Protection, mandates the employer's specific requirements for the selection and use of respirators for protection against airborne hazards where other hazard controls are not feasible.

27. Section 1910.134(a)(1) specifically states:

"In the control of those occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors, the primary objective shall be to prevent atmospheric contamination. This shall be accomplished as far as feasible by accepted engineering control measures (for example, enclosure or confinement of the operation, general and local ventilation, and substitution of less toxic materials). When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used."

28. OSHA 1910.134(a)(2) further states:

"A **respirator shall be provided to each employee when such equipment is necessary to protect the health of such employee.** [Emphasis added] The employer shall provide the respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protection program, which shall include the requirements outlined in paragraph (c) of this section. The program shall cover each employee required by this section to use a respirator."

29. OSHA 1910.134, Respiratory Protection requires employers to select respirators based on an evaluation of respiratory hazard(s) to which the worker is exposed and workplace and

identified relevant workplace and user factors. This respirator-specific evaluation is in addition to the hazard assessment required by the 1910.132 Personal Protective Equipment Standard.

30. Section 1910.134(d)(1)(iii) further states:

> "The employer shall identify and evaluate the respiratory hazard(s) in the workplace; this evaluation shall include a reasonable estimate of employee exposures to respiratory hazard(s) and an identification of the contaminant's chemical state and physical form. Where the employer cannot identify or reasonably estimate the employee exposure, the employer shall consider the atmosphere to be [immediately dangerous to life and health] IDLH."

31. The OSHA Respiratory Protection Standard provides for progressively more protective respirators (higher protection factor) based on the concentration of the airborne hazard or risk mitigation strategy or on a voluntary use basis if a higher level of protection is desired by the employee. For example, employees may use National Institute for Occupational Safety and Health (NIOSH)-certified filtering facepiece respirators (N95) for general interactions with infectious Covid-19 patients or may request their employer to provide a more protective PAPR for aerosol generator medical procedures conducted on infectious Covid-19 patients or to just provide a higher level of protection. OSHA has assigned protection factors (APFs) for each type of NIOSH-certified respirators with an properly fitted N95 filtering facepiece and half-face APR having a APF or 10 and a PAPR assigned a APF of 1,000.

32. Before the SARS-CoV-2 virus that causes Covid-19 emerged and became an occupational exposure concern, the OSHA law mandated employers eliminate or control airborne and other "hazards" from the workplace. OSHA standards have never defined employees as inherently hazardous or being hazardous substances or materials that must be eliminated from or otherwise controlled in the workplace. It had always been the duty of the employer to protect the employees through hazard elimination or mitigation. In addition, OSHA has also never mandated employees be vaccinated to eliminate workplace hazards.

33. The history of the founding of OSHA as revealed in the publication "About OSHA"[5] , the agency was created to keep employees in the workplace and as safe as possible.

34. In the case of airborne hazards, including infectious diseases of any kind (such as SARS-CoV-2 Covid-19), employers have a duty to implement the hierarchy of controls to eliminate or isolate the hazard (infectious airborne virus or infectious patient) using engineering controls where feasible, or minimizes employee exposures through the use of administrative control measures, which can include working remotely for employees whose jobs can be performed remotely, with all remote work-related costs to be paid for by the employer pursuant to OSHA guidelines.

35. Where hazard eliminating, isolation or the use of engineering and administrative controls do not adequately mitigate the workplace hazard, OSHA requires employers to conduct a written hazards assessment to identify the appropriate PPE for employees to protect them from the workplace hazard(s) that may include the selection and issuance of respirators to prevent inhalation hazards, based on an airborne hazard assessment.

36. Employers have the duty to select respirators, conduct medical surveillance, fit-test and train employees on the proper use, inspection, and cleaning of respirators, and perform an Respirator Program assessment of their written Respirator Protection Program in accordance with 29 CFR 1910.134, Respirator Protection, Section §1910.134(l), "Program Evaluation".

37. In the context of the hazards caused by infectious disease, and in particular during the Covid-19 pandemic, OSHA describes the hazards in a January 29, 2021 publication titled "Protecting Workers: Guidance on Mitigating and Preventing the Spread of Covid-19 in the Workplace,"[6] as follows:

---

[5] See U.S. Department of Labor - OSHA Publication #- 3302-01R - "All About OSHA 2020" https://www.osha.gov/sites/default/files/publications/all_about_OSHA.pdf

[6] See OSHA January 29, 2021 publication titled "Protecting Workers: Guidance on Mitigating and Preventing the Spread of Covid-19 in the Workplace" at https://www.osha.gov/coronavirus/safework

> "SARS-CoV-2, the virus that causes **COVID-19** is highly infectious and spreads from person to person, including through aerosol transmission of particles produced when an infected person exhales, talks, vocalizes, sneezes, or coughs. COVID-19 is less commonly transmitted when people touch a contaminated object and then touch their eyes, nose, or mouth. The virus that causes COVID-19 is highly transmissible and can be spread by people who have no symptoms and who do not know they are infected. Particles containing the virus can travel more than 6 feet, especially indoors and in dry conditions with relative humidity below 40%. The CDC estimates that over fifty percent of the spread of the virus is from individuals with no symptoms at the time of spread."

38. Unlike chemical airborne hazards, aerosol transmission from infectious patients causes exposures that cannot be routinely measured in the air and have no established occupational exposure limits. Healthcare employees working in close proximity to patients, are likely to have a high risk of inhaling infectious aerosols (droplets and particles). Respirators for healthcare employees, and masks or filtering facepieces for contagious patients, are essential to prevent employee exposures. The selection of respirators with higher APFs (for example, PAPRs equipped with HEPA filters provide the highest level of respiratory protection) for healthcare employees.

39. Control and mitigation airborne infectious diseases are in fact nothing new for employers within healthcare occupation settings. The OSHA Standard 29 CFR 1910.1030, Bloodborne Pathogens, requires employers to have a written Exposure Control Plan designed to eliminate or minimize employee exposure when they are identified.

40. OSHA Section 1910.1030(b) states:

> "Occupational Exposure means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties."

41. OSHA Section 1910.1030(d)(2)(i) states:

> "Engineering and work practice controls shall be used to eliminate or minimize employee exposure. Where occupational exposure remains after institution of these controls, personal protective equipment shall also be used."

42. CDC guidance documents such as "Hospital Respiratory Protection Program Toolkit, Resources for Respirator Program Administrators" (2015) and "2007 Guideline for

Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings, Last update: July 2019" provide detailed guidelines for the selection and use of respirators for healthcare workers exposure to airborne natural and manmade infectious disease hazards such as anthrax, noroviruses, monkeypox, multidrug-resistant organisms, tuberculosis, and viral hemorrhagic fevers (Lassa, Ebola, Marburg, Crimean-Congo fever viruses). CDC guidance clearly identifies the appropriate respiratory protection as the primary control mechanism to prevent or minimize healthcare workers exposures to these airborne pathogens where engineering controls and isolation are not feasible.

43. OSHA's description of hazards associated with SARS-CoV-2 Covid-19 along with the declarations by the CDC, the President of the United States, and the New York State and City Public Health Commissioners, identify transmission through airborne means as the primary infectious pathway. The most effective Risk Mitigation Tool to prevent airborne transmission of the airborne aerosolized SARS-CoV-2 virus to healthcare employees that could result in severe Covid and death are the wearing of respirators equipped with HEPA filters (where other engineering controls and isolation measures are not feasible) that have **99.97% efficiency** in removing airborne aerosols that may include the virus that causes Covid-19 according to the Hospital Respirator Protection Program Toolkit first published May 2015 ("Respirator Guidelines").[7] The use of HEPA-filtered respirator has been longer standing strategy and the highest efficacy for infection prevention and control or airborne pathogens.

44. According to the Respirator Guidelines, there are a very small number of respirator types that meet the 99.97% efficacy rate, namely, 1) the HEPA filtered air-purifying respirators (APRs) and 2) HEPA filtered Powered Air Purifying Respirator (PAPRs).

[7] See Hospital Respiratory Protection Program Toolkit published May 2015 by the U.S. Department of Labor, OSHA, CDC Workplace Safety and Health, Department of Health & Human Services, National Institute for Occupational Safety and Health (NIOSH) - https://www.osha.gov/sites/default/files/publications/OSHA3767.pdf

45. HEPA-filtered APRs and PAPRs have OSHA assigned protection factors greater than surgical facemasks (no assigned protection factor) with half-face APRs with a protection factor of 10 and PAPR 1,000, respectively. The combination of a tightfitting respirator seal, in the case of the APR, to minimize leakage around the face-to-facepiece seal with the HEPA filtration, provides a high degree of protection to the wearer. The PAPRs higher level of protection is based on a positive pressure around the wearer's face generated from air drawn by a pump through HEPA filters being forced into the PAPR facepiece or hood creating positive pressure. This equipment ensures any leaks or breaks around the face-to-facepiece seal or within the hood result in outward air movement away from the wearer's nose and mouth. PAPRs also provide cooling of the wearer and are more comfortable to wear over extended work shifts.

46. While the various vaccines released for use in the U.S. have been developed to reduce the symptoms of severe Covid-19 according to the CDC, they do not prevent the transmission of the airborne virus in the workplace. Under OSHA, employers have the duty to eliminate or reduce employee's exposure to the airborne hazards such as the SARS-CoV-2 virus and/or variants that cause Covid-19. OSHA's Bloodborne Pathogens Standard provides the closest analogous healthcare employment requirements for employers. Where the employer's Bloodborne Pathogen mandatory Exposure Control Plan identifies employee exposure to pathogens such as those containing Hepatitis B, the employer's duty is limited to making the Hepatitis B vaccine (which is the only reference to vaccines in the standard) available to pathogen exposed employees (not mandating the vaccine).

47. OSHA Section 1910.1030(f)(1)(i)[8] states:

> "The employer shall make available the hepatitis B vaccine and vaccination series to all employees who have occupational exposure, and post-exposure evaluation and follow-up to all employees who have had an exposure incident."

48. For all airborne pathogens, OSHA requires employers to provide the most effective controls to prevent exposure. When respiratory protection is required, the HEPA filtered PAPRs provide the highest filtration efficiency rate of 99.97% (and an OSHA protection factor of 1,000) to prevent inhalation of airborne infectious aerosol or particles that could lead infection, severe Covid-19, and death. PAPRs and supplied-air respirators are routinely worn when treating patients with more virulent infectious diseases, including viral hemorrhagic fevers (such as Ebola) that have a greater risk of causing immediate death than SARS-CoV-2 Covid-19. They are a proven and effective hazard control measure for employees.

49. Based on my knowledge of the various occupational industries like various manufacturing, allied trades such as welding, and chemical companies in the U.S. where engineering controls are not feasible and workers are exposed to highly toxic and carcinogenic chemicals, respiratory protection programs are routinely implemented to prevent worker exposures. Similarly, hospitals, biomedical laboratories, and other healthcare facilities, implement respirator protection programs as part of their infection prevention and control programs to mitigate risks of the transmission of infectious airborne aerosols that can lead to severe illness and death caused by respiratory pathogens. Therefore, respirator protection programs are feasible and demonstrated to be effective in the workplace.

50. The OSHA requirements cited are applicable to state and city governments, including New York City, through the State's OSHA Plans.

PRELIMINARY CONCLUSORY OPINIONS

51. Based on my review of the foregoing facts and based on my review of the relevant applicable OSHA regulations, guidelines, and mandates along with the New York State

and City Covid-19 emergency public health laws, I make the following preliminary opinions, with a reasonable degree of certainty as a certified industrial hygienist with experience in federal and state compliance, as follows:

a. Under OSHA, employers have the duty to furnish to each of their employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.

b. The OSHA regulations do not require employees to prevent severe injury and death in the workplace. The regulations only require employees to be trained in the proper use and limitations of safety equipment provided by the employer to eliminate or mitigate workplace hazards.

c. Employers have the duty to identify workplace hazards, utilize a hierarchy of controls strategy to eliminate, isolate or mitigate all workplace hazards, including airborne infectious aerosols.

d. Employers cannot delegate its hazard identification and mitigation duties under OSHA to employees and employers must bear the cost of implementing hazard controls measures to protect employees.

e. Employers must conduct and certify a written hazard assessment to identify hazards and the appropriate risk mitigation control for employees to minimize injury and exposure from such hazards.

f. Where respirators are to be used to prevent exposure, employers must conduct a hazard evaluation specific to airborne inhalation hazards to select the appropriate respiratory protection for employees to prevent occupation exposures to infectious airborne aerosols, such as the SARS-CoV-2 virus.

g. Where it is not feasible to eliminate or otherwise control the airborne hazards associated with the infectious airborne SARS-CoV-2 virus that causes Covid-19 in

a healthcare workplace with engineering or administrative controls alone, wearing of NIOSH-certified respirators such as a HEPA-equipped PAPR provides the highest-level employee respiratory protection to prevent virus transmission through inhalation and mitigate exposure from other routes of entry, such as ocular and mucous membranes, without the use of vaccines.

h. Eliminating and mitigating the airborne transmission of SARS-CoV-2 infectious aerosols that can lead to severe Covid-19 and Covid-19 related deaths in the workplace, is clearly the employer's duty, not the employees.

i. Although the Covid-9 vaccines can reduce the symptomology and severity of the Covid-19 infection, vaccines are not effective in preventing exposure to or inhalation of the airborne aerosolized virus in the healthcare workplace setting. Therefore, the use of effective respiratory protection such as a HEPA-filtered PAPR by healthcare workers provides the greatest level of prevention from both exposure and infection.

j. Employees that work remotely outside of the employer workplace, who work in single worker vehicles or single worker workspaces or work outdoors and do not have contact with the public and can perform most of the essential functions of their jobs without contact with other workers, are not at risk for occupational exposure to the SARS-CoV-2 virus while performing their duties. Therefore, employer mandated vaccinations for these employees are not necessary because these administrative controls effectively eliminate exposure to the employee or other employees.

k. Providing remote work option for employees whose jobs can be performed remotely serves as an effectively occupational exposure control. Even if the employee becomes infected and is symptomatic with Covid-19 or variants other

employees remain protected since they are not in the workplace. Remote work is a risk control that should be used to protect an employee while allowing the employee to remain on the job.

52. The statements and opinions made in this Affidavit are preliminary and I reserve the right to add to, amend or modify my opinions as more facts are provided during the course of any litigation of the claims by Plaintiffs for which this affidavit is provided.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

Dated this 13th day of APRIL, 2022.

BRUCE MILLER

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 13th day of April, 2022, by BRUCE MILLER, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.

Debra A Reynolds
Signature of Notary Public

[Affix Notary Seal]

DEBRA A. REYNOLDS
COMMISSION NUMBER 13448
NOTARY PUBLIC
STATE OF IDAHO

CURRICULUM VITAE – BRUCE MILLER, M.S., CIH

Area of Expertise

- Comprehensive Industrial Hygiene and Safety
- Department of Energy Former Worker Retrospective Exposure Assessments
- Expert Health and Safety Consulting Services
- Workplace Accident Investigation and Regulatory Compliance
- Microbial Investigations and Indoor Air Quality

Education & Certification

- M.S., Industrial Hygiene, Central Missouri State University, Warrensburg, MO, 1993
- B.S., Industrial Technology, Southern Illinois University, Carbondale, IL, 1990
- A.A.S., Bioenvironmental Engineering Technology, Community College of the Air Force, 1988
- Certified Industrial Hygienist (CIH), American Board of Industrial Hygiene, (ABIH) #6439

Professional Organizations & Memberships

- Member, American Industrial Hygiene Association (AIHA)
- Member, American Conference of Governmental Industrial Hygienist (ACGIH)
- Member, Health Physics Society (HPS)
- Associate Member, American College of Occupational and Environmental Medicine (ACOEM)

SUMMARY OF QUALIFICATIONS

Mr. Miller is a board-certified industrial hygienist with more than 33 years of experience in comprehensive health and safety practice and 25 years of specialized environmental remediation and construction consulting experience at the Department of Energy (DOE), U.S. Army Corps of Engineers (USACE), and Department of Defense (DOD) clients and sites. He has managed and supervised health, safety, and health physics personnel and provided project management, planning, regulatory support, and oversight to numerous environmental remediation, waste management, construction, decontamination and decommissioning, and microbial and indoor air quality investigations, and remediation projects. He has served as an expert conducting investigations and preparing expert reports for both plaintiffs' and defendants' cases. Specialized project and legal experience researching, developing expert reports, and testifying in worker retrospective occupational exposure assessments and causation illness compensation court cases related to former defense weapons facilities and DOE national laboratories workers.

Mr. Miller has developed and implemented comprehensive health and safety programs and the supporting field documents to meet federal (DOE, DOD, USACE, Federal Aviation Authority (FAA), Department of Interior (DOI), and Homeland Security (HLS)), state, and local regulatory compliance. He has provided project management, direct health, safety, environmental, radiological field oversight of remedial investigation/feasibility study (RI/FS), remedial design/remedial action (RD/RA), construction and D&D projects at some of the most complex hazardous and mixed waste sites in the country. Projects have included large scale excavation, drilling, sampling; hurricane recovery; nuclear facility construction and demolition, and waste retrieval and characterization in radioactive and transuranic (TRU) mixed waste pits; remediation of high explosive fragment sites, and clearance of unexploded ordinance throughout the DOE Complex and numerous DOD facilities. He has broad-based experience in health, safety, and radiological regulatory compliance at national

DOE laboratories, DOD facilities, US Navy facilities, numerous USACE Districts, construction sites, for industrial and commercial clients. He currently serves on national committees for the American Industrial Hygiene Association (AIHA) (Past Chair/Member of the Law Committee & Member of Indoor Environmental Quality Committee member) and was a past Chair of the AIHA's Consultants Special Interest Group (SIG).

CURRENT AND PAST EXPERT LEGAL WORK

Claimant Expert – Board of Industrial Insurance Appeals, State of Washington, Employer Motions for Summary Judgement, Washington Labor & Industry Cases (February 2020 – Present) - Serving as an industrial hygiene expert for current, former employees, and deceased (spouse) (Claimants) of the U.S. Department of Energy Hanford Site, who have filed affirmative claims under the "Hanford Site Employees—Occupational Disease Presumption," or Washington Substitute House Bill 1723 ("HB 1723") law. These claims are being challenged by the Department of Energy. Expert services have been provided through contracts with the State of Washington Attorney General's Office (AGO) and other law offices supporting these Claimants. Work scope includes providing expert consultation, preparing declaration opinions (as needed), and testifying in discovery and perpetuating depositions and Washington State Board of Industrial Insurance hearings. Expert testimony addresses current and past exposures directly related to Claimants' presumptive claims illness or diagnosis. Specific expertise includes detailed research of worker exposures to Hanford's chemicals, hazardous agents, and radiological hazards, examination of historic industrial hygiene and radiological exposure data, interviewing claimants, reviewing medical records, occupational medical surveillance data, developing claimant-specific exposure profiles and qualitative exposure assessments, review of toxicological and epidemiological data, studies, and NIOSH cohorts for relevant exposure agents, and evaluating claimant medical diagnosis against known toxicological chemicals or radiation for specific occupation exposure causation. Mr. Miller has provided testimony in more than 50 cases.

Defendant Expert – Case No. 4:18-cv-05189, United States of America, Plaintiff, v. State Of Washington; Jay Inslee, in his official capacity as Governor of the State of Washington; Washington State Department of Labor & Industries; Joel Sacks, in his official capacity as Director of the Washington State Department of Labor & Industries December 2018 – December 2019) Served as an industrial hygiene expert for the State of Washington Attorney General's Office (AGO) (Defendant), in the aforementioned case involving United States Department of Justice that has brought a suit against the State of Washington based on the enactment of a workers' compensation law, entitled "Hanford Site Employees—Occupational Disease Presumption," or Washington Substitute House Bill 1723 ("HB 1723") claiming that HB 1723 singles out and discriminates against the Federal Government. Mr. Miller provided expert consultation and rendering opinions related to the current and past exposures of Hanford workers for the AGO within the context of this lawsuit. U.S. District Court ruled against the U.S. Department of Justice in this case. The District Court decision affirming the WA State statute was appealed to the U.S. 9th Circuit Court of Appeals.

Plaintiff Expert - Hanford Challenge, et al. v. United States Department of Energy and Washington River Protection Solutions, No. 4:15-cv-05086 – Settlement Agreement (March 2017 – December 2019) Mr. Miller served as the 'Qualified Technical Person' providing technical reviews and comments of several Hanford contractor respiratory protection program documents in support of the Washington Attorney General's Office (AGO) under the Settlement Agreement with the U.S. Department of Energy. Technical reviews of numerous respirator cartridge testing reports and supporting documents (prepared by the Pacific Northwest National Laboratory on behalf of Washington River Protection Solutions as well as independent third-party consultants) were completed and comments provided the AGO. Cartridge testing was conducted to determine the ability of cartridges to effectively filter and absorb vapor and gases from the Hanford Tank Farm vapor phase at various tank wastes and to estimate cartridge service-life to develop cartridge changeout schedules. Technical reports were evaluated based on test design and chemical analysis methodology, National Institute for Occupational Safety and Health (NIOSH) respirator cartridge design and testing criteria, manufacturer's cartridge NIOSH technical approvals, and known Hanford contaminants of concern properties.

Plaintiff Expert – Case No. 4:15-cv-05087, State of Washington, Plaintiff, v. Ernest J. Moniz, Secretary of the United States Department of Energy, the United States Department of Energy, and Washington River Protection Solutions LLC, Defendants (May 2016 – September 2018) – Served with a team of experts as the State of Washington Attorney General's Office (AGO) (Plaintiff) industrial hygiene expert in this case involving long standing worker exposures to tank farm vapors at the Department of Energy, Hanford Site Tank Farms. Services included review of the AGO complaint, declaration for injunctive relief, discovery documents and reports, worker exposure incidents and medical surveillance, plaintiff regulatory requirements, and contractor implementing program and procedures and other related expert reports, declarations and depositions. Researched tank farm processes and history, contractor health and safety programs, DOE, NIOSH, and Government Accountability Office inspection reports, tank farm industrial hygiene exposure assessment and characterization, industrial hygiene program and implementation, toxicological data for tank content and vapors, and nature and extent of past worker exposure events. Prepared declarations in support of the AGO's injunctive relief and supplemental preliminary injunction as well as draft expert reports. Additional support included preparing potential lines of inquiry for Defendant (Department of Energy and Contractor) health and safety experts and management personnel depositions related to worker health and safety and exposure events. Provided expertise on exposure mitigation, work process, engineering controls, personal protective equipment, respirator cartridge testing, medical surveillance, and ongoing technical expertise and support during settlement discussions with the U.S. Department of Justice.

Defendant Expert – Case No. CV-2014-300, Danita Bachman and Clayton Snook (P) v. The Jud 2000 Trust, Eugene D. Jud and Janice A. Jud, Trustees; Cid E. Hayden and John Doe Persons or Entities I through V (D), State of Idaho, in and for the County of Lemhi (August 2015 – April 2017) – Served as Defense industrial hygiene expert investigating water damage and subsequent microbial growth at the Plaintiff's residence. Plaintiff asserts Defendants irrigation methods are flooding the crawlspace of the home. Conducted an investigation of the residence including visual and physical inspection, testing of building materials for moisture content, performed thermo-imaging of building materials, and collected air samples for laboratory analysis to quantify types of

mold spores present; reviewed Plaintiff's expert's report and methodology and prepared lines of inquiry for Defendant counsel use during Plaintiff expert's deposition; prepared and submitted expert report with opinions to Defense counsel. Testified at trial as Defense expert for nature and extent of water damage and mold growth, sources of water damage and mold growth and required remediation for reoccupancy.

Plaintiff Expert - Case 4:15-cv-00165-EJL, Ralph Stanton (P) v. Battelle Energy Alliance (D), U.S. District Court, District of Idaho (February 2015 – October 2015) – Served as Plaintiff safety and health expert examining nature of accident and exposure of workers to plutonium contamination at the Zero Power Physics Reactor facility located at the Department of Energy, Idaho National Engineering Laboratory. Reviewed all relevant radiological, safety and industrial hygiene data and procedures; operational procedures and work packages; prepared lines of inquiry for deposition of Defendant key management and technical staff; reviewed deposition transcripts and supported Plaintiff counsel during and following depositions. Served as the technical manager and prepared the scope of work for radiological survey of Plaintiff's home by third party and analysis of all samples collected. This case was settled prior to the completion of my expert report and opinions, deposition or expert testimony.

Defendant Expert - Case No. 4:10-CV-184-EJL, Roy Santo (P) v. Acuity Brands Lighting, Inc; Lon Ricks Electric, Inc. (D), United States District Court for the District of Idaho – Served as Defense safety and health expert for the construction accident case involving a fall from a ladder resulting in a severe laceration from an exposed metal light fixture resulting in a permanent disability. Reviewed nature of the accident and conducting an accident investigation and multiple root causal analysis based upon available records and photos. Analysis consisted of reviewing all available accident reports and witness statements; Occupational Health and Safety Administration construction regulatory review of applicable standards including multi-employer worksites; ladder manufacturer's use and limitation; Plaintiff's and Defendant's witness's deposition review; and developed lines of inquire for Defendant counsel for Plaintiff deposition. Prepared expert report with opinions and submitted to Defense counsel. This case was settled prior to my being called as an expert to offer my opinions for deposition or at trial.

Plaintiff Expert - Case No. CV-09-4235, Scherr & Scherr, LLC (P) v. Kirk Wolfe (D), District Court of the Seventh Judicial District of the State of Idaho in and for the County of Bonneville – Served as Plaintiff industrial hygiene expert in case involving construction defects and latent damage caused by water damage to Plaintiff's professional building during construction. This expert work followed a water damage and microbial assessment of the Plaintiff's building (The Sleep Institute). Expert analysis on the nature and extent of the water damage was conducted. Analysis included a complete review of my previously microbial assessment and report; review of the construction timeline and material storage practices on site; analysis of the weather condition at the time of the construction activities where building materials were not enclosed; comparative water damage analysis with other assessments that I had conducted. My expert report was prepared and submitted to Plaintiff counsel. This case was settled prior to my being called as an expert to offer my opinions at deposition and trial.

Plaintiff Expert – Case No. CV-06-275, Sherry Fuqua V. Paul Olsen dba Paul Olsen Trucking; Paul Olsen, Individually; Marion Jerry Weaver, and John Does I-V, District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine – Served as Plaintiff safety and health expert examining nature of an industrial work accident involving the Plaintiff who was a driver for the Defendant. Plaintiff was atop a truck when another driver moved the vehicle causing the Plaintiff to be dragged then thrown from the truck against a wall. A comprehensive review of Defendant's accident investigation, records and photos was conducted; Defendant trucking and operational facility procedures reviewed; training and other human resources records for the Plaintiff reviewed; fall restraint and other safety device manufacturer's use and limitations literature analyzed; and an accident root cause analysis developed. Additionally, lines of inquiry for Defendant witness depositions were prepared and discovery item requests submitted to Plaintiff counsel for consideration. This case was resolved before the expert report and opinions were completed. No expert deposition or testimony was given in this case.

Defendant Expert – Hymas v. Rockwell Homes, Inc., United States District Court for the District of Idaho – Served as Defendant safety and health expert for the construction accident case involving a fall of a worker from an elevated platform onto a piece or exposed rebar at a residential construction site resulting in an injury. Case involved multiple construction contractors, subtier contractors and staffing agency that the Plaintiff worked through. A review of all available accident records, medical information, and photos was conducted; construction contracts were reviewed for terms and conditions and areas of responsibilities/oversight at the site; and applicable Occupational Safety and Health Administration Construction Regulations were reviewed and workplace requirements for fall protection identified. Lines of inquiry for the Plaintiff witnesses were prepared and an outline of the expert report was drafted. Prior to the expert report and opinions submittal date, this case was settled. No expert deposition and testimony was given in this case.

Third Party Expert – Farm Bureau Insurance Company, Pocatello, Idaho – Conduct an expert review and evaluation of the restoration of a water damage claim, subsequent mold growth, and area remediation conducted at a private residence in Idaho. The insured alleged that mold spores were released during the preliminary water and mold restoration activities and migrated to their occupied areas resulting the mold spore contributed negatively to the Insured's health. Mr. Miller prepared a expert report with opinions based on a site visit to the insured residence, inspection of the home and interview with insured; review of the adjuster's case file, field notes, and interview; interview with the water and mold restoration contractor; interview with the project industrial hygienist and review of their report; and review of the air, swab, and bulk microbial sampling data contained within the industrial hygienist report. All opinions were provided in my expert report. No deposition or court testimony was taken.

RELEVANT EXPERIENCE

President, Health and Safety Services, LLC
Idaho Falls, ID
2013 - Present

Responsible for day-to-day operations and marketing services for Health and Safety Services, LLC (HSS) which is focused on providing high-quality expert health and safety consulting services to

clients. Primary HSS technical consulting services consist (1) Health and Safety Compliance and Consulting - compliance, inspections, violation mitigation and corrective actions, and development of regulatory complaint programs and policies; (2) Worker and Area Exposure Assessments - development of occupational exposure assessments in compliance with AIHA Exposure Assessment methodology including evaluation of exposure groups, engineering controls, work procedures, and personal protective equipment usage. This generally includes conducting exposure monitoring or sampling to document exposures and provide defensible exposure data as required by OSHA; (3) Expert Consulting and Report Writing - provide health and safety legal expert consulting and prepare expert reports for cases involving worker injuries and exposures, accidents and regulatory compliance matters; (4) Expert Testimony - serve as a testifying health and safety expert for cases involving worker injuries, exposures, accidents and regulatory compliance matters typically following expert consulting and report writing services. HSS specializes in expert case consulting in matters involving worker accidents, occupational exposures, retrospective exposure assessments, injuries and OSHA compliance and has represented both plaintiffs and defense in cases.

President, North Wind Solutions, LLC
North Wind Group
Idaho Falls, ID
February 2011 – April 2013

As President, Mr. Miller provided vision and leadership by identifying new clients, business lines, and opportunities and ensuring that all work is carried out in a professional, technically complete manner. He served as the single point of contact with the Small Business Administration (SBA) and is responsible for developing and approving all business plans, joint venture agreements, and SBA 8(a) program compliance. He supervised project managers and met directly with clients to ensure all technical and contractual deliverables were completed on schedule and within budget. Mr. Miller ensured that operations of NW Solutions meet the philosophy, mission, strategy, and business goals and objectives of the North Wind Group. He ensured that corporate policies and programs related to health and safety, quality, procurement, contracts, and human resources are implemented on a daily basis and provided quarterly operational reports. Under Mr. Miller's leadership, North Wind Solutions grew from a startup to successful SBA 8(a) certified firm with a second SBA certified 8(a) Joint Venture with a combined backlog of more than $12M in less than two years. Additionally, he was responsible for obtaining an Alcohol, Tobacco, Firearms and Explosives (ATF) explosive license and served as the corporate Responsible Person for the ATF license responsible to ensure all employee possessors purchasing, storing and handling explosives were compliance with ATF regulations and license requirements.

Sr. Vice President, Corporate Health, Safety and Security; Facility Security Officer
North Wind Group and all subsidiary companies
Idaho Falls, ID
February 2009 – February 2011

Served as the corporate point of contact for health, safety and security matters for the North Wind Group and 6 subsidiary companies consisting of over 400 employees working from 18 offices throughout the US and with revenues exceeding $100M annually. Reported to the President of the North Wind Group and developed and implemented all health, safety and security programs and

procedures, tracked and report performance metrics and took correction actions where needed to improve performance. Under Mr. Miller's leadership, the North Wind Group and subsidiary companies maintained an experience modification rate (EMR) well below their industry averages, obtained and maintained two OSHA Voluntary Protection Program (VPP) STAR sites, was awarded the OSHA VPP Star among Stars award, and was successful at having several years with zero OSHA recordable or lost-time injuries.

As the Facility Security Officer (FSO), Mr. Miller controlled all aspects of the North Wind Group and subsidiary Department of Defense and Department of Energy facility security clearances including developing all security and operational security plans, maintaining government contractor required security databases, facilitating new subsidiary company and personnel clearances, and interfacing with government agency security and counter-intelligence/terrorism counterparts during audits and program oversight to ensure compliance with security regulations.

Vice President, Corporate Health and Safety Director
North Wind, Inc.
Idaho Falls, ID
February 2004 – February 2009

Developed and maintained all corporate health, safety, and radiological programs; reviews and approves project health and safety plans and procedures for all North Wind Group Companies including natural and cultural resources, remediation, treatment, construction, demolition projects and operating facilities. Health, safety and security lead for 18 North Wind offices and provide direct support to projects in all North Wind Group geographic locations. Worked with workers compensation policy holder, professional organization, OSHA VPP Program office and remediation industry H&S professionals to ensure all programs provided for an effective safety culture and corporate H&S goals are met. Supported strategic planning, teaming and proposal development, project management, and served as a technical resource for internal and external customers. Provided expert consultant and witness industrial hygiene and safety services and testimony for attorneys regarding accidents, exposure assessments, microbial/IAQ, safety issues and other health and safety related cases.

He has written procedures, conducted training, and established medical surveillance programs to control exposure to radionuclides, heavy metals (arsenic, asbestos, beryllium, cadmium, chromium, lead), mercury, and solvent contaminants in compliance with OSHA substance standards at uncontrolled hazardous waste sites. Project sites have included waste pits/trenches, contaminated soils and underground storage tanks, mine tailing piles, landfills, drummed hazardous waste, UXO/MEC, radioactive structures and piping, and radioactive and mixed (hazardous/radioactive) waste and debris locations throughout the US for the DOE, US Air Force, US Coast Guard, US Army, NAVFAC, USACE, commercial, and private clients.

PAST MAJOR PROGRAMS & PROJECTS

Program Consultant, HSS, LLC – North Wind Solutions, LLC for the U.S. Navy, Space and Naval Warfare Systems Command (SPAWAR), SPAWAR Systems Center Pacific, Marine Mammal Program (MMP), San Diego, CA (2013) – Served as the program consultant to transition program manager responsibilities to new program manager. Facilitated client and staff meetings, reviewed program operations metrics and budgets, provided budgeted staffing levels and recommended changes to increase efficiency. Additionally, wrote the North Wind Dive Safety Manual and developed all Dive Plans/Dive Hazard Analysis for all topside and underwater dive operations to meet requirements of OSHA 29 CFR Subpart T, Commercial Diving requirements. Developed fiscal year end program metrics to Navy client demonstrating all contractual performance objectives were met or exceeded with zero change orders or client concerns.

Corporate Sponsor/Program Manager – U.S. Navy, Space and Naval Warfare Systems Command (SPAWAR), SPAWAR Systems Center Pacific, Marine Mammal Program (MMP), San Diego, CA (2012-2013) – Developed the technical and cost proposal and served as chief negotiator to secure this $6M+ 3-year firm fixed price contract to serve as the construction and maintenance contractor for the Navy's MMP. Program included constructing, maintaining, and cleaning mammal enclosures and associated docks and platforms, storage sheds, and support MMP operational buildings. Routine diving and boat operations were required to maintain MMP locations throughout the San Diego Bay area. Additional responsible for emergency and requested maintenance of two additional MMP locations in the Pacific Northwest and South Atlantic regions. Developed all operational operations metrics, budgets, and conducted oversight to ensure client requirements and MMP animal safety requirements were met. Developed new dive program, dive medical surveillance protocol, upgraded all dive gear, created new maintenance database, and improved dive efficiency through better scheduling and coordination of dive tasks with MMP personnel. Exceeded all contractual performance metrics with zero safety incidents while exceeding project profit target.

Project Health and Safety Manager - U.S. Department of Homeland Security, United Stated Coast Guard, Base Support Unit, Pier 36, Building 3, Seattle, WA (2012) – Served as project health and safety manager and principal certified industrial hygienist to provide direct support and oversight of lead paint removal and encapsulation of the Pier 36, Building 3, a single-story warehouse structure constructed in 1930 with a footprint of approximately 200,000 ft^2. The $15M contract required extensive scaffolding erection (large area scaffolding spanning approximately 12,000 ft^2 for each area abated with levels 4 through 6 greater than 50 feet high). A negative pressure HEPA-filtered lead abatement containment was constructed over existing occupied office and command facilities to isolate personnel and allow for continuous operations during media blasting, cleaning and encapsulation of lead-based paint located on building metal trusses, asbestos corrugated roofing and walls. Extensive air sampling and continuous ventilation pressure monitoring of containments was conducted to provide objective evidence to USCG Command and occupants that lead control work area containment integrity and controls were functioning adequately during their occupancy. All work was completed with zero OSHA recordable injuries and all lead exposures to abatement workers and outside containment were well below the established occupational exposure limits.

Project Health and Safety Manager – U.S. Department of Energy (DOE), Idaho National Laboratory (INL), Pit 10 Accelerated Retrieval Project (ARP) VII Nuclear Facility Design/Build Construction Project (2010-2011) – Served as project health and safety manager responsible for preparation of all health and safety documentation to meet DOE requirements for the $17M design and construction of a retrieval enclosure structure to be used to remediate transuranic mixed waste located in the Subsurface Disposal Area of the Radioactive Waste Management Complex at the INL. Facility was constructed as a Category 2 nuclear facility. Health and safety documentation including 10 CFR 851, *Worker Safety and Health Program,* Integrated Safety Management System, Construction Safety Plan, Hoisting and Rigging Plan, and all work packages and associated Job Safety Analysis in compliance with Occupational Safety and Health Administration (OSHA) 10 Code of Federal Regulation (CFR) 1926, *Construction* standards. Additionally, responsible for developing and overseeing all medical surveillance requirements, served as the North Wind representative for all INL site stabilization agreements and collective bargaining associated with trade unions workers that were direct hired by North Wind for construction.

Project Manager/Lead Investigator – U.S. Army Corps of Engineers, Savannah District, Air Sampling Analysis for Mold Prevention Technology Demonstration Project, Ft. Gordon, GA (2009-2010) - Served as Project Manager/Lead Investigator evaluating two ventilation system treatment technologies (UV light and hydrogen peroxide) installed to destroy airborne biological contaminants in multiple HVAC air handling units serving Army Barracks where Warriors in Transition (service members from Operations Enduring Freedom and Iraqi Freedom injured in combat who are transitioning back to civilian status). Study consisted of conducting a series of five rounds of air sampling (baseline and 4 quartering rounds) for microbial contaminants using culturable media (MEA and GD18) and non-viable spore traps up and down streams of the return air HVAC treatment units in two barracks, two control barracks, and outdoor background locations to determine speciation and count for vegetative and non-vegetative of fungi. Additionally, HVAC parameters such as particle counts, air flow, temperature, relative humidity, CO_2 and percent fresh air are being measured for each HVAC air handling unit and branches are being measured. The final report and results were used for the selection of the preferred HVAC treatment system technology throughout the Army Engineering Command Southeast District.

U.S. Department of Homeland Security, United Stated Coast Guard (USCG), Integrated Support Command, Kodiak Air Station, AK (2008 – 2012) - Served as health and safety manager and lead industrial hygiene technical consultant for multiple task orders at the Kodiak, Alaska USCG station and USCG facilities in Seattle, WA. Projects completed included asbestos and lead based paint remediation projects of barracks, dining facilities, and other common areas; lead contaminated soils characterization and removal; installation of a vapor recovery extraction system in barracks/common area crawlspaces to mitigate groundwater chlorinated solvent contaminants; conducting IAQ study of occupied barracks and common areas to define military/patron risk; remediation and demolition of housing, surplus USCG facilities, and contaminated areas.

Prepared all hazardous materials abatement plans, oversight of CIH conducting asbestos Phase Contrast Microscopy (PCM for occupational) and Transmission Electron Microscopy (TEM for area clearance) air sampling, approved all asbestos and lead abatement plans, and write technical project reports summarizing hazardous materials abatement and clearance of common areas.

Provided industrial hygiene technical consulting for the design, installation and commissioning and balancing of multi-building vapor intrusion remediation systems to place crawlspaces under negative pressure (with respect to occupied areas above) to eliminate ground water contaminant trichloroethylene (TCE) and perchloroethylene (PCE) vapors from entering barracks and common areas above. Conducted commissioning testing and balancing of all ventilation system components and all associated baseline and post-commissioning indoor air studies using EPA Method TO-15, Volatile organic compounds (VOCs). Prepared technical memorandums for USCG summarizing air study results and supported USCG with technical discussions with U.S. EPA Region 10 related to military occupant/patron risk and reoccupancy.

Technical Consultant – U.S. Department of Energy, Office of River Protection (ORP), Hanford Site, WA (2009) – Provided a technical compliance and Independent Government Cost Estimate (IGCE) evaluation and report of the Washington River Protection Solutions (WRPS) 10 CFR 850, Chronic Beryllium Disease Prevention Program (CBDPP): Final Rule implementation cost submittal to DOE Office of River Protection (ORP). This WRSP CBDPP compliance review and costs estimate was developed for the Hanford Tank Farm Beryllium Program to align all programmatic elements with the Hanford Sitewide CBDPP. IGCE was developed using engineering assessments, cost estimating relationships, vendor quotes, and technical basis for differing CBDPP element costs approaches. All assumptions and methodology were provided in the final report to DOE ORP.

U.S. Department of Homeland Security, United Stated Coast Guard, Integrated Support Command, USCG Kodiak Air Station, AK (2008-2012) - Served as health and safety manager and lead industrial hygiene technical consultant for multiple task orders at the USCG station Kodiak Island, Alaska. Projects completed included asbestos and lead based paint remediation projects of barracks, dining facilities, and other common areas. Prepared all hazardous materials abatement plans, oversight of CIH conducting asbestos phase contrast microscopy (PCM) occupational and transmission electron microscopy (TEM) clearance air sampling, approved all asbestos and lead abatement plans, and writing technical reports summarizing hazardous materials abatement and clearance of common areas. Provided industrial hygiene technical consulting for the design, installation and commissioning and balancing of multi-building vapor intrusion remediation systems to place crawlspaces under negative pressure (with respect to occupied areas above) to eliminate TCE and PCE vapors from entering barracks and common areas above. Conducted commissioning testing and balancing of all ventilation system components and all associated baseline and post-commissioning indoor air studies using EPA Method TO-15 for volatile organic compounds (VOCs). Prepared technical memorandums for USCG summarizing air study results and supported USCG with technical discussions with U.S. EPA Region 10 related to military occupant/patron risk.

Program Health and Safety Manager – Bureau of Land Management, Hazardous Materials Emergency Response Contracts (State of Utah and Idaho), statewide locations (2004 – 2012) - Served as the health and safety manager developing all programmatic H&S documents and approving all project-specific Health and Safety Plans, prescribed medical surveillance and monitoring, OSHA 29 CFR 1926 regulatory interpretations, and provided oversight for all emergency and planned remediation actions conducted under these state-wide contracts. Projects completed included emergency response to numerous spills and illegal dump sites. Planned

responses have included reclamation of mine sites, illegal asbestos dump sites, contaminated structures and heavy metal mine tailings, and the safe demolition and closure of BLM structure and mine adits.

LANL Environmental Program Support – Department of Energy, Los Alamos National Laboratory, NM (2006-2010) - Provided technical project support services for numerous task orders issued under North Wind, Inc's master service contract with Los Alamos National Security, LLC (LANS). Prepared Environmental Program-Wide Environmental Safety and Health Plan and project specific Site Safety and Health Plans to meet the requirements of 10 CFR 851, Worker Safety and Health Program and 29 CFR 1926.65, HAZWOPER, respectively. Projects included, TA-21 ISS tritium component removal, LANL Baseline Industrial Hygiene Exposure Assessment, Industrial Hygiene Support for LANL Beryllium Project, TA-54 Performance Assessment and Low-Level Waste Operations, and LANL Master Drilling Contract.

Program Health and Safety Manager – Bureau of Land Management, Anvil Points Remediation Project, Rifle, CO (2008-2009) - Served as the health and safety manager and providing ongoing technical project support to removal of over 200,000 cubic yards of spent oil shale tailings and placement in a North Wind design/build repository. Prepared and approved Site-safety and health plans, developed area and personal air sampling strategies, directed medical surveillance, and provided engineering controls to minimize airborne and contact exposure to arsenic, lead and PAH contaminants associated with shale tailings as well as buried asbestos transite piping. Provided safety oversight and direction for mine adit closure and construction of 70,000 cubic yards of spent shale yard in an engineered repository.

Beryllium Decontamination and Demolition Project – Former American Beryllium Company, Sarasota, FL (2008) - Served as the project certified industrial hygienist (CIH) for Environmental Dimensions, Inc for the decontamination and demolition of portions of the former American Beryllium Company. This project was being conducted for Lockheed-Martin Corporation (LMC). Primary activities included reviewing/revising the project health and safety plan, developing exposure assessments for personnel conducting decontamination tasks, reviewing all personal and area air sampling data, interacting with the LMC and community advocates to communicate beryllium exposure and airborne controls and to facilitate understanding of the health controls to ensure no releases to the adjacent housing areas.

Program Health and Safety Manager, Sustainment, Restoration, and Modernization Task Order Contract (SATOC), U.S. Air Force Civil Engineering Support Agency, Worldwide **(2005-2010) –** Served as the Health and Safety Manager for all SATOC task orders. Prepared, reviewed and approved all site safety and health plans; subcontractor safety programs and plans, and H&S-related technical submittals; oversaw all H&S compliance; performed program H&S audits and inspections; supervised and provided technical guidance to all assigned field site safety officers; determined/oversaw medical surveillance requirements; served as subject matter expert for all H&S issues and compliance. Projects on-going or completed have included:

- Charleston AFB, SC – Runway/Taxiway Replacement and Upgrades- $28M
- Malmstrom AFB, MT – Mechanical System Upgrades/Replacement - $3M

- Holloman AFB, NM – Various civil projects – $6M
- Moody AFB – Lighting and ECIP Installation - $1.9M.

Former Hanger 6 Site Characterization and Remediation, U.S. Army Corps of Engineers-Alaska District, Fort Wainwright, Alaska (2006-2007) - Mr. Miller served as the Health and Safety Manager and USACE Program Certified Industrial Hygienist performing various airborne volatile, semi-volatile, metals, and chemical warfare agent compounds sampling during soil disturbance, liner installation, and excavation of potentially contaminated soils at the former Hangar 6 site located at Fort Wainwright, Alaska. All work was conducted in Level B (supplied air/chemical resistant clothing) and included personal, perimeter (project fence line), soil gas, and direct reading air monitoring was conducted to gather chemical source and exposure data used to further evaluate potential construction worker reported symptoms who were excavating soil at the former Hangar 6 site in July 2006.

Area and personal air samples were collected and analyzed in accordance with selected National Institute of Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) Toxic Organic (TO) Compendium Method TO-15, and Laboratory Modified NIOSH methods.

Direct reading instruments (including a photoionization detector [PID] with an 11.7 eV lamp, flame ionization detector [FID], and MSA HAZMATCAD Plus [material chemical agent detector/chemical warfare agents] were calibrated and operated in accordance with the manufacturer's operating instructions. All air and soil gas sampling and direct reading monitoring of workers was performed by the Mr. Miller.

Beryllium Hazard Assessment - DOE National Engineering Technology Laboratory, Albany, OR (2006-2007) – Served as the project technical lead for the development of a beryllium hazard assessment for the DOE National Engineering Technology Laboratory Albany Research Facility located in Albany, OR. Scope of services include a comprehensive review of existing DOE NETL Albany CBDPP; review existing occupational exposure assessment process and procedures; review and assessment of the current baseline beryllium inventory; review and assessment of existing and ongoing Beryllium facility characterization including wipe, bulk and air sampling; statistical analysis of characterization and personal exposure data utilizing left-censored statically modeling approaches such as "R"; development of similar exposure groups and hazard ranking of these groups and specific operational areas; preparation of the written hazard assessment to provide a quantification of beryllium as a health and safety hazard as it relates to the NETL-Albany site and its operations; updating the existing NETL Albany CBDPP; and certification of the hazard assessment by a third party accredited/certified board.

Project Health & Safety Manager, Rocky Mountain Arsenal Projects, Denver, Co (2005-2007) – Served as Health and Safety Manager for multiple projects at the Rocky Mountain Arsenal site in Denver, CO under contract with Tetra Tech EC, Inc. Developed and approved all Task-specific Health and Safety Plans (THASPs), determined PPE and medical surveillance, personal and areas monitoring, site s controls, and other requirements for degraded chemical warfare agents and other hazardous materials requiring level D-Level B PPE. Representative projects have included well sampling, well installation and abandonment, at various Lime Basins project sites. Met OSHA

VPP STAR requirement for all site activities.

LMAES Structures and Equipment Dismantlement and Disposal (Pit 9 Facilities D&D), DOE Idaho National Laboratory, ID (2005-2007) - Served as the Corporate Health and Safety Director and project ES&H oversight for the D&D of all LMAES structures (Retrieval Building, Remediation Treatment Facility, and all tanks, piping, and equipment located in and around the facilities) and equipment located within the Radioactive Waste Management Complex Pit 9 Subsurface Disposal and Administrative Areas. Demolition methods included deconstructing the retrieval building to relieve stress on structure; physical demolition of the concrete RTF using a combination of wrecking ball, tracked excavator with shears and processors; and shearing, sizing, and processing structures in the administrative area. Project involved significant hoisting and rigging of large (100') steel structural members and equipment as well as handling and hauling of demolition debris. Mr. Miller was responsible for writing the integrated Safety Management System (DEAR 970.5223-1, "Integration of Environment, Safety and Health into Work Planning and Execution"), Contractor Assurance System (DOE Order 226.1), Project Health and Safety Plan, and preparing North Wind prime contractor 10 CFR 851, Worker Safety and Health Program for DOE-ID approval. All contractually required plans were submitted and approved within contractually defined schedule.

Hurricane Damaged Facility Demolition and Reconstruction, U.S. Air Force AFCEE Worldwide Environmental Restoration and Construction (WERC), Various Gulf Coast Bases (2005-2007) - Served as the project health and safety manager for several projects totaling $15M involving structure demolition and debris removal, reconstruction, and renovations at Hurlburt Field Air Base in Ft. Walton Beach, FL and Keesler Air Force Base (AFB), Biloxi, MS a result of Hurricanes Ivan, Dennis and Katrina. These projects were performed under NWI's US Air Force (USAF) WERC contract and NWI served as the general contractor. Mr. Miller has prepared the health and safety plans and specifications other for all projects that have included a wastewater treatment plant, marina, construction of a bridge, and renovation of the USAF Special Forces headquarters building. Additionally, Mr. Miller was onsite at Keesler AFB in Biloxi, MS within 10 days following Hurricane Katrina performing water damage assessments of multiple base facilities, assisted in the preparation of demolition workplans, prepared project health & Safety plans, and specifications for remediation contractors.

FWA-102 (Taku Garden) Site Characterization and Remediation, U.S. Army Corps of Engineers-Alaska District, Fort Wainwright, AK (2005-2006) - Served as the project health and safety manager and NWI Alaska Division Manager overseeing several Stryker Brigade projects at Ft. Wainwright located in Fairbanks, AK from April 2005 through December 2006. Projects included site characterization to delineate the extent and nature of PCB and other hazardous materials and unexploded ordinance (UXO) at a 52-acre construction site where legacy military hazardous materials were discovered through initial soils screening and excavation tasks. Mr. Miller has prepared all accident prevention plans, site safety and health plans, worker and area exposure monitoring plans, developed engineering controls to ensure no off-site releases to adjacent residential areas, and approved all munitions of concern (MEC)/UXO support plans. Project activities included surface geophysical studies (GPR, EM-31, EM-51); surface and subsurface soil sampling (direct push); installation of temporary and permanent water monitoring wells; field

screening with polychlorinated biphenyl (PCB) assay kits; excavation of test pits and trenches; stockpile sorting for MEC/UXO and associated UXO and scrap disposal; handling, repacking and sampling of excavated waste drums; PCB contaminated soil handling and transportation; and comprehensive worker, resident, and area exposure monitoring. This scope of work also included two additional sites where UXO and known and unknown soil contaminants have been found. Project tasks were conducted in Level D, C and B personal protective equipment.

Hurricane Katrina Damage Assessments, Demolition and Reconstruction, U.S. Air Force Center for Environmental Excellence (AFCEE), Worldwide Environmental & Construction (WERC) Contract, Kessler AFB, MS (2005-2006) – Served as the health and safety manager for this $12M+ project and task lead for all damage assessments. North Wind is providing turnkey damage assessments, demolition and reconstruction services of facilities and grounds in response to hurricane Katrina damage at Keesler Air Force Base (AFB), located in Biloxi, Mississippi under North Wind's the US Air Force Worldwide Environmental Restoration and Construction (WERC) contract. North Wind mobilized to the base within 3 days in response to a Government notice to proceed and conducted damaged assessments of several facilities and base grounds. Mr. Miller served as the lead for all water damage and mold assessments of occupied and abandoned structures performing visual inspections of all buildings, thermal imaging of building surfaces, taking moisture meter measurements of building materials, and delineating all materials to be remediation through each structure. He also prepared all asbestos and mold remediation specifications for all water damaged and mold affected building materials including containment requirements, remediation protocols, structural drying, and post-remediation assessment criteria. In addition, Mr. Miller prepared all project health and safety plans (HASP) and specifications for each scope of work that addressed all project activity hazards, hazard mitigation, and contingencies associated with facility demolition and reconstructions as well as grounds remediation. Demolition and reconstruction scope included the Keesler AFB marina and associated facilities, security building, contracting building, dormitories, NCO billeting building, debris and stump removal and repair/replacement of various docks. He oversees all safety and health officers assigned to the project. *All project work was completed without a single recordable or lost time injury.*

U.S. Army Corps of Engineers, Nationwide Remediation Services **(2004-2008)** – Prepared all health and safety plans and served as Program CIH for North Wind U.S. Army Corps of Engineering projects in the Sacramento, Savannah, Omaha, Mobile, and Alaska Districts. Projects include remediation of contaminated release sites; installation, operations and maintenance of vapor extraction systems; construction projects; and investigation of unexploded ordinance/ordinance and explosive (UXO/OE) sites including remote USACE formerly used defense sites (FUDS) located on Alaskan Aleutian Islands and St. Lawrence Island.

In Situ TRU Waste Delineation and Waste Removal at Hanford 618-10/618-11 Burial Grounds, DOE Hanford, WA (2004-2007) **-** Served as Project Health and Safety Manager – Major Project Lead for DOE-HQ Environmental Management, Technology Development and Deployment Program In Situ TRU Waste Delineation and Waste Removal at DOE Hanford, Washington 618-10/618-11 Burial Grounds. The project goal is to identify, develop, and demonstrate technologies to support accelerated Hanford site remediation. DOE fabricated fuel for the Hanford Site nuclear production reactors in the 300 Area that produced large volumes of many types of radioactive wastes,

including transuranic (TRU) wastes that were disposed on in trenches and vertical pipe units (VPUs). North Wind has developed VPU retrieval technology that is being demonstrated as a proof-of-principal in a cold testing facility prior to applying this technology to the 618-10/18-11 Hanford Area. Work to date has included preparation of all work plans, health and safety plans, test plans, and procedures necessary to conduct full scale cold testing of a large diameter casing driven by a pile driver to over core and retrieve the simulated VPU. In addition, development and field testing of surface geophysical technology and downhole nuclear logging methods are being tested to verify the technology for hot operations. The final project Phase II task will be to retrieve radioactive materials containing VPU from the Hanford 618-10/618-11 area.

Los Alamos National Laboratory, DOE TA-73 Airport Landfill Closure Project, Los Alamos, NM (2004-2006) – Prepared comprehensive safety and health plan for Los Alamos National Laboratory TA-73 airport landfill RD/RA closure project. Project included conducting large scale excavation of closed landfill, retrieving debris and waste from a steep slope located approximately 100-ft above the Pueblo Canyon valley with a drag line and excavation equipment. Final fill and grading cover requirements will meet voluntary consent order RCRA Subtitle C landfill requirements. The entire landfill area was regraded. Additionally, all heavy equipment operations were conducted adjacent to the active Los Alamos County Airport runway. Health and safety procedures and plans have been prepared to be compliant with DOE O 441, 29 CFR 1910.120 HAZWOPER, 29 CFR 1926, Construction, and relevant FAA requirements.

***Kadlec Hospital DOE Building 748 Decontamination and Decommissioning Project*, DOE Richland, WA (2004-2005) -** Served as the Project Health and Safety Manager – Major Project Lead for D&D of the Kadlec Medical Center DOE Building 748 (Emergency Decontamination Facility) located adjacent to the Kadlec Medical Center in Richland, Washington. Contract scope included preparation of all work plans, demolition plan, health and safety plan, and final characterization sampling and analysis plan (prepared in accordance Multi-Agency Radiation Survey and Site Investigation Manual [MARSSIM]); removal and decontamination of radiologically contaminated equipment and surfaces to meet DOE Order 5400.5 (Radiation Protection of the Public and the Environment) release requirements; characterization, removal, and packaging for transportation of hazardous materials and waste (lead, mercury, PCBs, creosote, tritium); and abatement of friable and nonfriable asbestos containing building materials. North Wind used a track excavator equipped with various buckets, specialized shears, and processors to demolish and size above grade concrete structure and piping, excavate of buried sumps, tanks, ductwork and remove underlying contaminated soils. Building 748 facility was located within 75 feet from the hospital surgical suite and is adjacent to the emergency entrance. All demolition tasks were completed with minimal impact to the ongoing Kadlec Medical Center operations.

Operable Unit 1-10 (V-Tanks) and CERCLA Soil Area Decontamination and Decommissioning Project, Idaho National Engineering and Environmental Laboratory, ID (2004) - Prepared all health and safety documentation including site-specific health and safety plans (HASP), job safety analysis (JSA), technical procedures, and hazard screening checklists for this D&D project that consisted of removal, transfer, and treatment of PCB contaminated radioactive liquid and sludges from underground tanks, piping systems, and vaults located at Test Area North at the Idaho National Engineering and Environmental Laboratory (INEEL).

***U.S. Army Yuma Proving Ground, Yuma, AZ* (2004)** – Provided all health and safety oversight for the U.S. Army Yuma Proving Ground investigation and remediation of 600-acre range area. The area was used for range practice, demolition activities, open detonation, and open burning of explosive ordinance. Unexploded ordinance (UXO) consisted of live rounds, submunitions, anti-personnel mines, and ordinance and explosives elements were nitrocellulose, TNT, RDX, and other nitrogen-based explosives.

SWSD TRU Waste Container Retrieval, DOE Hanford, WA (2004) – Provided procedure development, technical approach, and safety support services to Fluor Hanford, Inc. management in support of transuranic (TRU) container retrieval operations at the Hanford Solid Waste Storage and Disposal (SWSD) area. Services include review and revision of operating procedures for TRU container retrieval operations, container handling, and special handling for deformed, damaged, and breached containers. Included safety approach and contingencies for container handing and retrieval.

White Sand Missile Range (WSMR) Operational and Safety Services, Las Cruces, NM (2004) – Provided safety and health technical services to BAE Systems, Inc at the DOD White Sand Missile Range (WSMR). Services include reviewing and revising the site-wide health and safety documentation, preparing multimedia inspection criteria, conducting compliance safety and health audits of operational, support, and tenant facilities. Continued periodic support of the High Energy Laser Test Facility (HELSTF) with respect to operational safety issues is also being provided.

President/Principal Technical Consultant
Vortex Enterprises, Inc
Idaho Falls, Idaho
December 1998 – February 2004

Wrote and reviewed safety analysis reports, hazards assessments, health and safety plans, and other related safety programs for government and commercial clients. Managed and supervised industrial hygiene (IH), safety, and health physics personnel and provides project management, planning, regulatory support, and oversight to numerous Department of Energy (DOE) environmental restoration, waste management, construction, and decontamination & decommissioning (D&D) projects. Provided expertise in health, safety, and radiological engineering and hazard controls The DOE project listed above including onsite investigations, evaluations, and risk assessment studies. Conducted hazard/OSHA 1910 (General Industry) and 1926 (Construction) regulatory compliance assessments and develop strategies/products to resolve deficiencies and enhance programs. Served as the project manager, field team leader, and health and safety officer for drilling, remedial investigations, removal actions, construction, site investigations and D&D projects. Mr. Miller provided project management and direct nuclear operations, industrial hygiene, safety, environmental compliance, and radiological field oversight for remedial investigation/feasibility study (RI/FS), remedial design/remedial action (RD/RA), and radiological D&D projects. In addition to DOE projects, he provided health and safety services for construction, private industry remediation projects, and water damage and microbial investigations.

***Water Damage and Microbial Assessments and Investigations (1998-2004*)** - Specialty project investigative work conducting water damage and microbial assessments for residential,

commercial, insurance company, hotel and medical facility clients. Conducted investigative assessments utilizing physical inspection methods such as moisture meters, infrared thermal imaging camera, indoor air quality (IAQ) parameter meters, laboratory air samples for viable and non-viable fungi, bioaerosol sampling, and particle counters. Prepared assessment reports that included detailed remediation specifications and protocols in accordance with industry standards and conducted post-remediation assessments to ensure all remediation protocol requirements were met. Served as water damage and microbial consulting expert, wrote expert reports and was a speaker at the 2004 National Mold Symposium in Las Vegas, NV.

Bechtel BWXT Idaho, LLC (BBWI) Management and Technical Services (1998 – 2004) – Provided technical and management support services to Bechtel BWTX Idaho, LLC (BBWI) at the Department of Energy Idaho National Engineering and Environmental Laboratory (INEEL). Mr. Miller's support included serving as the project field team leader (FTL) and health and safety officer (HSO); writing Health and Safety Plans (HASPs), detailed technical procedures, system operability (SO) test procedures, and operational test plans. Ensuring project compliance with DOE Order 5480.19 Conduct of Operations, OSHA Voluntary Protection Program (VPP), Integrated Safety Management Systems (ISMS), nuclear facility operational training requirements, and related safety analysis documents. Served as the FTL for numerous site investigation, remediation, technology development/deployment, and testing at transuranic (TRU) mixed waste subsurface disposal areas. Participated as member of technology design team and lead field activities for all BBWI/DOE readiness assessments for start-up and implementation of new field Category 2 nuclear operations as described below.

OU 7-10 Glovebox Excavator Method Project (2003-2004) – $90 million dollar project involved remote excavation and retrieval of TRU mixed Rocky Flats Plant waste drums and debris in OU 7-10 (Pit 9) located in the Subsurface Disposal Area (SDA) at the Radioactive Waste Management Complex (RWMC). Provided key health, safety and nuclear operational expertise including writing the comprehensive operational health and safety plan; evaluation of engineering controls; development and implementation of a test plans for cold and hot (radiological) operations, detailed operating and SO test procedures for a full-scale excavation mockup facility and OU 7-10 "hot" operations at the Pit 9 category 2 nuclear facility; wrote numerous facility system startup procedures (ventilation system, dust suppression system, air emissions system, and CCTV system); preparing all job hazard analysis for cold and hot operations and incorporated hazard mitigation steps into operating procedures; drafted all decontamination and dismantlement procedures (retrieval confinement structure (RCS) Fogging, RCS and packaging glovebox system (PGS) Housekeeping, Grouting the Waste Pit, RCS and PGS Characterization, Immobilizing Residual Contamination, and Decontamination of the RCS and PGS); and developed emergency plan contingencies for this state-of-the-art remote TRU mixed waste retrieval facility. The Glovebox Excavator Method Project was successfully completed eight months ahead of the enforceable regulatory milestone date.

Operable Unit 7-13/14 Integrated Probing Project (IPP) (2002-2004) - Project involved sonic drilling, sampling, and retrieval of TRU mixed waste samples buried in pits and trenches within the Subsurface Disposal Area (SDA) at Radioactive Waste Management Complex (RWMC). Mr. Miller prepared comprehensive Health and Safety Plans (HASPs) for cold tests and all OU 7-13/14 IPP

"hot" (buried radioactive material areas) operational activities. Served on design team developing specialized exposure monitoring, engineering controls (HEPA drill string enclosure, and glove bags), and work practices designed to mitigate TRU mixed waste hazards. Presented health, safety, and exposure mitigation strategies to state of Idaho, DOE and EPA Region 10 regulators. Prepared detailed technical operating procedures and served as the Field Team Leader (FTL) for first-of-a-kind sonic drill rig installation of probes (lysimeters, tensiometers, vapor ports, visual, and moisture) within the TRU waste pits to obtain data related to radiological and organic contaminants and source term migration and transport. Served as the FTL for nuclear logging of probes (radioactive Cf source and neutron generator), core drilling and retrieval, glovebag sampling of installed instrumented probes (including developing the radionuclide source term for shipping of the leachate samples), extensive surface geophysical studies, and diffraction tomography. Additional served on engineering design team developing the second-generation instrumented probes. All document submittals for regulatory (DOE-ID/HQ, EPA-Region 10, and IDEQ) and project reviews were ahead of the project schedule and within or below the contractually defined budget.

Mr. Miller provided continuous technical and management services to Bechtel BWXT, Lockheed-Martin Idaho Technology Company and Parsons Infrastructure and Technology Group for the Operable Unit 7-10 (Pit 9) and Operable Unit 7-13/14 IPP projects 1998 - 2004.

Advance Mixed Waste Treatment Project (AMWTP), British Nuclear Fuels Ltd, DOE Idaho National Engineering and Environmental Laboratory, ID (2000-2001) – Provided industrial hygiene expertise to British Nuclear Fuels Ltd. (BNFL), Inc. for the $400 million dollar Advance Mixed Waste Treatment Project (AMWTP) located at the DOE Idaho National Laboratory (INL). Served as the consulting CIH for industrial safety and hygiene programs during the retrieval, treatment, and disposal of more than 65,000 cubic meters of transuranic (TRU) mixed waste at this CERCLA site. Project activities include large scale excavation of clean overburden soils, retrieval of 55-gallon drum, boxes, and other TRU stacked waste containers, chemical and radiological screening and assaying of each container, transportation to processing facility, and size reduction (compaction) of containers for final shipment to repository. Focus areas of technical support included development of the personnel and area exposure assessments; sampling strategy for beryllium, heavy metals, silica, physical hazards; and oversight of the chronic beryllium disease prevention program (10 CFR 850). Additional support and oversight was provided in the areas of respiratory protection, atmospheric monitoring and testing, statistical analysis of exposure monitoring data, and supervision of staff industrial hygienists. Provided on-site management support services during DOE HQ Operational Readiness Review (ORR) and follow-up DOE-HQ ORR verification to resolve technical issues related to exposure assessments.

Industrial Hygiene Laboratory Audit (2000) - Conducted comprehensive laboratory audit of DataChem Laboratories Industrial Hygiene laboratory facilities and procedures (Salt Lake City, UT Lab) for BNFL, Inc. Prepared audit criteria based on AIHA LQAP; DataChem SOPs, IHQAP, QAPP, 29 CFR 1910.1450, 10 CFR 20, and previous audit findings. Generated detailed summary report with findings, conditions adverse to quality, and recommendations.

In-Situ Grouting (ISG) Project Comprehensive Sampling (2002) – Conducted all geotechnical and chemical analysis sampling for the In-Situ Grouting (ISG) project demonstration at the Idaho

Engineering and Environmental Laboratory (INEEL) Radioactive Waste Management Complex (RWMC). Sampling included all geotechnical cylinder (compressive strength) and rare earth tracer samples associated with the high-pressure jet grouting of like-TRU waste forms at the RWMC study area. Samples were collected from the drill string, thrust blocks, drill string decontamination liquid, waste streams and high-volume air samplers placed around the high-pressure jet grouting rig to determine the extent and nature of potential TRU contamination via the rare earth tracers. Following a high-pressure grout pump failure, participated in the DOE Type B investigation to determine the root cause and contributing causes of pump failure focusing on the safety aspects.

INEEL CERCLA Disposal Facility Construction Health and Safety (1999) - Prepared Health and Safety Plan for the INEEL CERCLA Disposal Facility (ICDF) Operations. The HASP presented the systematic approach to identify and control ICDF operational hazards related to facility processes in accordance with 29 CFR 1910.120 (HAZWOPER) Treatment, Storage, and Disposal facility requirements.

(Private Client) Highly Flammable Material Sort, Segregate, Repackage, and Disposal Project (1999) - Conducted sorting, segregating, repackaging, and destructive preparation, and transportation activities for over 15,000 55-gallon drums of highly flammable nitrocellulose product at private client facility. Prepared a Site-Specific Safety and Health Plan, conducted detailed project-specific hazard-based training for workers, established engineering controls, personal protective equipment requirements, and monitoring requirements to ensure worker protection during handling, storage transport, and sizing operations.

DOE Pantex Plant Burning Ground Characterization and Remediation Project (2003) - Served as the decontamination and decommissioning (D&D) radiological task manager and health and safety officer for the remediation of high explosive and radiologically contaminated soil area at the DOE Pantex Plant, Burning Grounds Site, Amarillo, TX. Provided all radiological services including conducting in-progress, post excavation, and confirmation radiological surveys. Conducted all confirmation sampling in accordance with Multi-Agency Radiation Survey and Site Investigation Manual (MARSIMS) requirements. Approximately 300 yards of contaminated soil were excavated and loaded in roll-off bins for disposal within an expedited schedule resulting in early site closure.

In-Situ Grouting and In-Situ Vitrification Demonstration Projects (2002) – Prepared health and safety plans for the Idaho National Engineering and Environmental Laboratory (INEEL) In Situ Grouting (ISG) and In-Situ Vitrification (ISV) project demonstrations at the Radioactive Waste Management Complex (RWMC).

DOE Argonne West Cask Tunnel D&D Project (1999) - Developed industrial hygiene program and performed comprehensive air sampling and sound level evaluation in support of the Cask Tunnel Decontamination & Decommissioning (D&D) project located at the Idaho National Engineering and Environmental Laboratory (INEEL), Argonne West reactor facility. Air sampling was conducted for beryllium and respirable silica dusts and noise dosimetry/octave band analysis was performed during concrete and rock demolition tasks being conducted with a remotely operated hydraulic ram (Rubble Maker) to evaluate D&D worker exposures.

(Commercial Client) Glovebox Fabrication Lead Brick Exposure Assessment (2002) **-** Performed air sampling and engineering control evaluation of glovebox lead brick cutting and fabrication facility. Compliance to OSHA Lead Standard (29 CFR 1910.1025) and respiratory protection standard (29 CFR 1910.134) was evaluated and ventilation system efficiency examined. Submitted comprehensive report with recommendation for improving engineering controls, work practices, and ventilation efficiency to reduce worker lead exposures in accordance with OSHA Lead Standard.

Yuma Proving Ground Open Burn/Open Detonation Project (1999) **-** Wrote comprehensive health and safety plan (HASP) for the OB/OD Burn Pad Soil Excavation project at the Department of the Army, Yuma Proving Ground (YPG), Yuma, AZ. Project involved excavation and characterization of soils areas contaminated with residue from explosives (TNT/high explosives) and propellant burning operations. This HASP included a comprehensive lead medical surveillance program and other specialized training requirements associated with YPG explosive site operations.

DOE INEEL Construction Subcontractor Services (1998-2003) **-** Provided full range of industrial hygiene and safety consulting services to INEEL construction subcontractors conducting facility upgrades, new facility construction, and D&D activities. Expertise in 29 CFR 1910 (General Industry) and 29 CFR 1926 (Construction) regulatory requirements provided. Additional services included, conducting industrial hygiene exposure assessments, serving as competent person for excavation, consulting on OSHA substance-specific standards, and conducting full-period exposure monitoring for airborne contaminants such as metals, silica, asphalt fumes/emission constituents, and other organic compounds in compliance with National Institute for Occupational Health and Safety (NIOSH) analytical methods.

Expert Consultant and Witness Services (200-2004) - Provided expert consultant and witness industrial hygiene services and testimony for attorneys regarding exposure assessment and other health and safety related cases.

Corporate Health and Safety Director
S.M. Stoller Corporation
Boulder, CO - Idaho Falls, ID Office
February 1995 – December 1998

Wrote all corporate health, safety, and radiological programs; wrote and implemented health and safety plans for remediation and decontamination and decommissioning (D&D) projects; prepared technical proposals/costs/teaming agreements; and presented technical approach for Stoller proposal team during formal government contracting proposal oral presentations. Served as Corporate H&S technical manager for projects and offices throughout the U.S. and represented Stoller at national remediation and D&D conferences. While serving as the Corporate Health and Safety Director, Stoller had zero recordable injuries/illnesses and no lost time injuries even while conducting complex large-scale excavation, remediation, and radiological D&D projects.

DOE Pantex Plant Remediation and Health and Safety Services (1997-1998) - Served as the environmental, Safety and health (ES&H) manager for two large scale environmental remediation

projects at the DOE Pantex Plant. Health and Safety Plans (HASPs) were prepared for both the Accelerated Clean-up Activities (ACA) of chemically contaminated sites and Phase III of the decontamination and decommissioning (D&D) of Firing Site 5 (depleted uranium contaminated site and structures) projects. Mr. Miller prepared submittal to meet all technical requirements for large scale excavations, radiological D&D, high explosives handling, and other hazards analysis for approval by Pantex Environmental Restoration (ER) technical representatives. Served as the task manager for much of the Firing Site 5 characterization and D&D including, conducting U.S. Nuclear Regulatory Commission (NUREG) radiological surveys, excavation of contaminated soils, and demolition of existing structures to meet unrestricted release criteria of DOE Order 5400.5 and Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) site closure requirements.

DOE INEEL Investigative-Derived Mixed Waste Sampling, Sorting, and Repackaging Project (1996-1997) - Served as subcontractor project manager (PM) and FTL for waste management facilities investigative-derived waste (IDW) sampling and repackaging at the Idaho National Engineering and Environmental Laboratory (INEEL). Project involved characterization, sorting, lab packaging of low-level and mixed radioactive waste. Work was performed in airborne radioactivity, radiation and contamination areas in Level C and B personal protective and anticontamination equipment. More than 200 waste streams and 3,000 samples were sorted, treated, repackaged, and lab packed for shipment to on/off-site TSD facilities for further treatment and/or disposal. No contamination migration or events occurred due to excellent radiological control work practices and rigorous implementation of conduct of operations.

DOE INEEL Waste Management Services (1996) - Served as subcontractor PM and FTL for several waste operations facility mixed waste projects. Projects included characterization of the ash following a critical burn campaign at the Idaho National Engineering and Environmental Laboratory (INEEL) Waste Experimental Reduction Facility (WERF) and “decompaction” of a WERF low-level waste bin to locate and remove a mixed waste container and conduct characterization of the surrounding waste. Tasks were identified as “critical” by the contractor and DOE facility managers based on meeting regulatory milestones and involved direct regulator participation. These tasks were conducted in Level B 9supplied air) anticontamination personal protective equipment inside of high radiological contamination areas and airborne radioactivity areas. All tasks were successfully accomplished in a timely manner with no contamination migration. This allowed WERF to restart nuclear operations with minimal down-time and meet EPA regulatory milestones.

DOE Rocky Flats Plant T-1 Trench Remediation Project (1995) - Provided technical support to Stoller team performing Level B protective equipment remediation and repackaging activities at T-1 Trench at the DOE Rocky Flats Plant, Golden, Colorado.

DOE Pantex Plant Firing Site 5 Radiological Characterization and D&D Project (1997-1998) - Served as the Health and Safety Manager and assistant Project Manager for the DOE Pantex, Firing Site 5, Depleted Uranium (DU) cleanup project to meet DOE Order 5400.5 (Radiation Protection of the Public and the Environment) and Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) site closure requirements. Wrote several health and safety plans for different phases of this project, developed job hazard analysis, and provided health, safety, and radiological oversight for all project tasks. This project required obtaining more than 250,000 radiological

surface readings with board mounted radiation detectors and collecting of more than 1,000 surface and subsurface soil samples for analysis. Once the site was fully characterized, over 13,000 cubic feet of DU radiologically contaminated soils and fragments were excavated with trackhoes, the two remaining FS-5 structures (shot pad and concrete bunker) were surveyed, contaminated concrete scabbled (18 ton shot pad removed), and the remaining clean bunker structure demolished in place.

DOE Pantex Plan High Explosive/Radiation Remediation Project (1997) **-** Served as the Health Safety Manager for the Pantex High Explosive/Radiation (HE/RAD) sites remediation project. Wrote all health and safety required documents including, health and safety plan, task hazard analysis, high explosive fragment handling procedures, decontamination plans, and site-specific training requirements. Project involved remediation of soils contaminated with high explosives (HDX, RDX, TNB and TNT) and heavy metals.

DOE Pantex Plant Ditches ICM Remediation Project (1997) - Served as the Health and Safety Manager for the Pantex Ditches Interim Corrective Measures (ICM) remediation project. Wrote the health and safety plan, job hazard analysis, and related documentation for the work plan. More than 5,500 surface and subsurface soil samples were collected and over 22,000 separate analysis conducted by the on-site mobile analytical laboratory. Following contamination delineation, more than 400,000 cubic feet of contaminated soil was excavated at depths to 30+ feet and hauled from the sites for disposal at a hazardous waste landfill.

DOE INEEL Legacy Waste Management Project (1996-1997) - Served as a principal participant in the dispositioning of more than 1,845 legacy samples (in approximately four months) and 147,747 pounds of bulk legacy waste to the appropriate Idaho National Engineering and Environmental Laboratory (INEEL) or off-site EPA-permitted treatment, storage and disposal facility as part of the technical team providing support to Lockheed-Martin's Environmental Restoration Department. Project included providing turn-key services to characterize, sort, and package waste and samples; waste management; writing hazardous waste determinations; entering all shipping data into the INEEL IWITS shipping system; coordinating the shipment of legacy samples and waste; dispositioned samples back to the area of contamination; and creating close-out files to document each sample of waste "Lot" disposition action to meet EPA regulatory requirements. Additionally, performed solidification of low-level waste streams using cement to stabilization prior to shipment to the INEEL Radioactive Waste Management Complex (RWMC) facility in accordance with INEEL radiological waste acceptance criteria requirements.

DOE EINEEL CFA OU 4-17 and OU 4-42 Site Characterization and Remediation Project (1996) **-** Served as the subcontractor project manager and field team leader (FTL) providing technical support services to Parsons Infrastructure and Technologies Group during the removal actions at the CFA Operable Unit (OU) 4-17/47 and OU 4-42 petroleum contaminated sites. Services included: conducting field screening of contaminated soils using PetroFlag™ immunoassay screening kits to provide "real time" evaluation of cleanup activities, writing Sampling and Analysis Plan document and revisions to meet changing field requirements, and preserving, packaging, shipping all samples to meet 48-hour analysis requirements. Additionally, collected over 100 laboratory confirmation samples ensure excavation of contaminated soil met the risk-based corrective action (RBCA) goals.

DOE INEEL WAG 4 Comprehensive Remedial Investigation/Feasibility Study Project **-** INEEL Served as the subcontractor Project Manager (PM) and field team leader (FTL) for Waste Area Group (WAG) 4 comprehensive Remedial Investigation/Feasibility Study (RI/FS) activity. This project included sampling of over 600 surface and subsurface soil locations using hand augering, drilling, and trenching methods to meet RI/FS data requirements. Analysis for hazardous and radiological analytes was conducted. Responsible for all aspects of drilling subcontracting, sample collection, packaging and shipment of analytical samples. Although the scope of work was increased by approximately 20% midway through the project, the project was still completed two weeks ahead of schedule and under the original budget.

DOE INEEL CFA-04 Mercury Retort Sampling Project (1996) - Provided technical support to Parsons Infrastructure during the pumping and transport of 18,000 gallons of mercury contaminated water and sludge at the Central Facilities CFA-04 Mercury Retort site and direct field sampling support for characterization of Waste Area Group 4 Time Critical Removal Action at the Operable Units CFA-13, CFA-15, CFA-42, and CFA-47 sites at the Idaho National Engineering and Environmental Laboratory.

DOE INEEL In-situ Grouting Soil Isolation Project (1995) **-** Served as the subcontractor project manager providing sampling and analysis support, laboratory statement of work development, waste management, health and safety support, and training services for the Soil Isolation Project (Cold Test Pit and Acid Pit) at the Idaho National Engineering and Environmental Laboratory (INEEL). A patented in-situ stabilization technology was used to inject high-pressure grout in buried waste to create a permanent stabilization form for radioactive and hazardous (mixed) waste located in the RWMC Acid Pit. Mr. Miller collected all contamination control samples including - high volume air samples, swipe samples of the drill string and thrust block surfaces, grout returns, project waste streams, decontamination water, and HEPA filter system. All samples were collected, preserved, packaged and shipped within the analytical holding times and shipped to one on-site and five off-site laboratories.

DOE INEEL RWMC Acid Pit Sonic Drilling Project (1995) **-** Served as subcontract project manager for sonic drilling and coring of a Tech™ grout stabilized subsurface monolith at the Idaho National Engineering and Environmental Laboratory (INEEL) Acid Pit (Operable Unit 7-13/14). The "Soilcrete" monolith was created using a high-pressure jet grout injection method to stabilized subsurface metal, organic and radiological contaminates. Responsible for conducting all core logging, drill steel decontamination, characterization and subsampling of cores, packaging and shipping analytical samples, and waste management tasks.

Technical Leader, Industrial Hygiene
Lockheed-Martin Idaho Technologies Company (LMITCO)
Department of Energy, Idaho National Engineering and Environmental Laboratory
Idaho Falls, Idaho
October 1994 -February 1995

Directed staff of six industrial hygienists and three health and safety technicians supporting environmental restoration, waste management, and decontamination and decommissioning (D&D) activities at the Idaho National Engineering and Environmental Laboratory (INEEL). Managed department industrial hygiene programs and budgets, served as cognizant industrial hygiene

professional on all document review committees, LMITCO subject matter expert for 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response (HAZWOPER) regulation ensuring federal and DOE regulatory compliance. Represented the INEEL at national hazardous waste conferences, DOE-HQ working groups, technical issue teams, and HAZWOPER committees. Served on ad hoc environmental safety and health committees, that developed "fast track" health and safety procedures as requested by executive management.

Technical Leader, Industrial Hygiene
EG&G Idaho, Inc.
Department of Energy, Idaho National Engineering Laboratory Idaho Falls, Idaho
February 1994 -October 1994

Same position description as with Lockheed-Martin Idaho Technologies Company with the following additions: Drafted first model (template) Idaho National Engineering Laboratory (INEL) environmental restoration (ER) health and safety plan (HASP) to meet 29 CFR 1910.120, HAZWOPER regulatory requirements that was used by the ER Group and subcontractors for all INEL Remedial Investigation/Feasibility Study (RI/FS), Remedial Design/Remedial Action (RD/RA), and decontamination and decommissioning (D&D) projects. Developed and delivered ER and D&D hazard-specific HAZWOPER training course to workers, field team leaders, and project managers. Participated on DOE-Wide HQ Chemical Vulnerability Assessment evaluating chemical vulnerabilities throughout the DOE complex. Wrote sections of final report and recommendation for mitigating potential chemical vulnerabilities throughout the DOE complex.

Senior Engineer
EG&G Idaho, Inc.
Environmental Restoration & Waste Management Department (ER&WM)
Department of Energy, Idaho National Engineering Laboratory
March 1993 - February 1994
Idaho Falls, Idaho

Recognized, evaluated, and controlled all physical, chemical, and biological hazards resulting from environmental restoration (ER) and decontamination and decommissioning (D&D) projects at Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) sites on the Idaho National Engineering Laboratory. Conducted risk assessments of mixed hazardous waste (chemical and radiological) sites, designed engineering controls and process modifications to minimize worker exposures, determined all personal protective equipment requirements for project tasks, developed strategies for state-of-the-art personnel and area monitoring in mixed waste environments, authored and served as technical reviewer and editor for all project health and safety documentation, and approved work control documents (safe work permits, hot work permits, construction permits, etc.). Mr. Miller directly supported D&D projects at the following facilities: Test Are North (TAN) Operable Units 1-04, 1-05, 1-10, Radioactive Waste Management Complex (RWMC), Test Reactor Area (TRA), Chemical Processing Plant (CCP), Auxiliary Reactor Area (ARA) I/II/III, Special Power Excursion Reactor Test (SPERT) IV, Power Burst Facility (PBF), and Waste Area Group (WAG) 10 site-wide projects.

Director, Technical Services, Bioenvironmental Engineering
United States Air Force (USAF), 509th Operations Group, 509th Medical Group
Whiteman Air Force Base, Missouri
January 1992 -March 1993

B-2 Stealth Bomber Industrial Hygiene Director - As the 509 B-2 Stealth Bomber Program industrial hygiene director, reviewed Title I/II facility designs and conducted comprehensive occupational health evaluations of 20 new aircraft maintenance and support facilities housing 1,400 workers. Performed risk assessments on all hazardous processes and materials including unique B-2 bomber "skin" composite material exposures and attended USAF toxicological workshops on stealth technology exposures and thermo-degeneration (fire) constituents. Developed all new aircraft composite exposure monitoring programs and provided medical surveillance recommendations to Aerospace Medicine Commander and ensured implementation of new engineering controls.

Base Radiation Safety Officer - As the base radiation safety officer, controlled all aspects of comprehensive base radiological protection program in accordance with U.S. Air Force and Nuclear Regulatory Commission (NRC) requirements. Conducted ionizing and non-ionizing radiation surveys (industrial, medical x-ray, special nuclear material, sealed sources, radar, and laser) and ensured compliance with two NRC radioactive material licenses. Established and managed base radiation protection program requirements (ALARA goals, training, etc), and monitored whole body, extremity, and neutron doses of more than 50 radiation workers in 7 exposure areas through base dosimetry program. Briefed 509th Operations Group Base Command on Radiation Safety Program.

Special Projects Manager **-** Served as Bioenvironmental Engineering unit advisor and trainer for industrial hygiene technical matters. Conducted risk assessments to identify teratogenic reproductive hazards for all pregnant workers on base and provided duty restrictions to attending physician. Directed all high-profile occupational incident and illness investigations (radon, radiation exposures, asbestos, indoor air quality, surgical suite HVAC problems, tuberculosis quarantines, bioaerosol issues, and carcinogenic aircraft composite constituent studies). Worked with Chief of Aerospace Medicine to determine occupational exposure medical surveillance and monitoring requirements.

Director, Industrial Hygiene Section, Bioenvironmental Engineering
United States Air Force, 509th Operations Group, 509th Medical Group
Whiteman Air Force Base, Missouri
March 1991 - January 1992

Planned, implemented, and monitored adequacy of comprehensive occupational health program supporting 90 industrial facilities, 40 missile launch sites, and 2 reserve bases. Scheduled and assigned workload for five industrial hygiene technicians. Coordinated all environmental and special projects studies (air, soil, water, noise, radiation, asbestos, ventilation). Managed several base programs including, respiratory protection, hazard communication, confined space, and radiation dosimetry. Served with occupational physician on Occupational Health Exposure Committee, which established medical surveillance and biological monitoring requirements for more than 3,000 workers. Reviewed plans and hazardous materials requests for environmental

and health directives compliance, determined hazard codes for carcinogen product usage, handling and disposal requirements, evaluated engineering controls, and recommended personal and area exposures.

Manager, Industrial Hygiene Section, Bioenvironmental Engineering
Unite States Air Force, 52nd Tactical Fighter Wing, 52nd Aerospace Medical Group
Spangdahlem Air Force Base, (West) Germany
November 1987 - March 1991

Industrial Hygiene Section Manager - Scheduled and prioritized industrial hygiene evaluations and special projects for 130 industrial facilities and 3 support bases. Assigned workload to four industrial hygiene technicians and managed human and technical resources to ensure its timely completion. Conducted special surveys and incident and accident investigations and wrote summary reports. Directed training and prepared technical guidance for implementation of base occupational exposure programs (asbestos, hazard communication, risk assessments, respiratory protection). Tracked on-site and off-site environmental monitoring status on database and determined sampling priorities, strategies, and appropriate methods. Researched toxicology of highly hazardous products and substituted less toxic products for use. Served on base disaster response team (aircraft and weapon accidents, chemical and fuel spills, and fire incidents). Negotiated with local German union representatives regarding use of protective equipment and exposure monitoring requirements for base construction trades activities.

Industrial Hygienist - Conducted baseline, annual, and special occupational health evaluations of aircraft fabrication, maintenance, launch, weapons, radar, communication, vehicle maintenance, allied construction trades, welding, and medical center facilities. Collected exposure data, updated workplace and medical exposure casefiles. Prepared occupational workplace summary reports for the 52nd Medical Group flight surgeon and base medical director addressing engineering controls, protective equipment adequacy, chemical exposure risk assessments, ergonomics, and overall USAF, OSHA, and EPA directive compliance.

Emergency Response Team - Served as member of base emergency response team, which advised on-scene commander on establishing toxic corridors, health hazards, required protective equipment, and environmental impact from spills, aircraft accidents, weapon incidents, and special nuclear material loss or releases including determining radiation stay times, tracking radiological doses, and measuring fallout to establish radiation and contamination boundaries.

Wartime Duties - Wartime duties consisted of providing all nuclear, biological, and chemical (NBC) exposure monitoring to base commander and medical director during North Atlantic Treaty Organization (NATO) and U.S. Air Force Europe attacks in theater, establishing duty station at 2nd echelon hospital, and deployed wartime locations. Served on 2nd echelon hospital decontamination team decontaminating patients arriving at hospital, performed unexploded ordinance (UXO) sweeps following conventional warfare attacks, utilized chemical warfare agent (CWA) monitoring kits following chemical attacks, and performed all radiological monitoring and stay-time calculations following nuclear device detonations or radioactive fallout.

CURRICULUM VITAE – BRUCE MILLER, M.S., CIH

Professional Development and Training

Attended more than 80 American Industrial Hygiene Association (AIHA) professional development course (PDCs) (continuing education) for American Board of Industrial Hygiene (ABIH) Certified Industrial Hygienist (CIH) certification maintenance. Course in industrial hygiene, , exposure assessment, and other technical courses have completed annually since 1993 in the fields of construction safety, accident investigations, medical surveillance, exposure modeling and banding, biostatistics, epidemiological studies, occupational exposure limit adjustment, remediation technology and engineering, microbial and bioaerosol investigations, legal and expert witness/testimony, Biosafety Level 3 laboratory assessments and practices, and other industrial hygiene and safety related topics. A complete list of PDC courses completed is available upon request.

Department of Energy-Specific training includes -

- DOE Radiological Worker I & II Instructor (Mr. Miller was a DOE RW I & II Training instructor to DOE and contractors at the DOE Idaho National Laboratory)
- DOE Radiological Worker II
- Nuclear Criticality Safety
- Radiological Glovebag Installation, Inspection, and Use
- DOE Conduct of Operations and Maintenance
- OSHA 40-Hour HAZWOPER (with 8-hour refresher courses)
- OSHA HAZWOPER Site Supervisor
- OSHA Confined Space Entrant, Attendant, and Job Entry Supervisor
- Respirator Qualification Training (APR and supplied air)
- Medic 1st Aid/CPR
- HAZMAT General Awareness (DOT Sample Shipping)
- EPA CERCLA/RCRA TAA and SAA Inspections
- OSHA Institute - Indoor Air Quality Investigations

U.S. Air Force Training includes but not limited to:

- Industrial Hygiene Advanced Topics, USAF School of Aerospace Medicine
- Radiological Health Physics Course, USAF School of Aerospace Medicine
- Bioenvironmental Engineering Technician Course, USAF School of Aerospace Medicine.

Presenter and Instructor Courses

- Course Developer and Instructor: AIHA Professional Conference on Industrial Hygiene (PCIH) 2010, *WS-4 Mock Trial: Multi-employer Work Site*, Dallas, TX October 11, 2010.
- Arranger, Moderator, Presenter: American Industrial Hygiene Conference and Exhibition (AIHce 2009), Round Table - *249 Mock Trial: Liability Issues for the Industrial Hygienist*, June 4, 2009,

Toronto, Canada.

- Presenter: AIHce 2008, Round Table - *209 Mock Trial: Meth Lab Cleanup*, June 2, 2008, Minneapolis, MN.
- Course Developer/Instructor: AIHA Teton Local Section Professional Development Conference, *OSHA Multi-Employer Worksite Compliance,* December 9, 2005, Idaho Falls, ID.
- Speaker: Advanced Perspectives in Mold Prevention & Control: *Crafting Professional Judgment for Assessment & Remediation Approaches to Varying Occupancies/ Building Types* (November 7-9, 2004 Riviera Hotel and Casino, Las Vegas, Nevada)
- Course Developer and Instructor: 2004 Idaho Governor's Health and Safety Conference Mold Investigation and Remediation, University of Idaho, Pocatello, ID.

Other Specialties/Experience

Extensive experienced in operation of multiple industrial hygiene, environmental, and radiological monitoring and sampling instruments and equipment.

- Air/Direct Reading: personal and area air samplers, multi-gas meters, PID, FID, IR, photo-acoustical analyzer, portable GC, aerosol, thermal anemometer (ventilation), optical and laser particle counters.
- Environmental Media Characterization: conductivity/turbidity/dissolved oxygen/pH meters, coliwasa, bailers, environmental immuno-assay/ kits, soil augers (split, core, sludge, tube), liquid sampling pumps.
- Radiological Instruments: *Ionizing Instruments* - ion chambers, GM, scintillation, proportional counters, panoramic survey meter, *Non-Ionizing instruments* - infrared, radio frequency, radar, laser energy measurement instrumentation.
- Physical Hazard Monitoring: Noise meters/dosimetry, heat stress (WBGT), ergonomic stressors, vibration, infrared thermoimaging.
- Microbial Investigation/Sampling/Remediation: Culturable and nonculturable air sampling methodologies; collection of microbial specimens through direct tape lift, bulk sampling, dust collection; invasive inspection methods using borescopes, wall samplers; noninvasive inspection methods using non/penetrating moisture meters, infrared thermoimaging cameras, relative humidity measurements. Preparation of remedial specifications including establishing containment and decontamination areas, removal protocols, pre- and post-remedial sampling, and HVAC assessments.

Hardware and Software Capabilities

- Skilled in the use of Internet ES&H resources (toxicological registries and databases, exposure modeling, statistical exposure analysis, modeling, and program development)
- Proficient with various software packages (EXEL, WORD, Power Point, ACCESS, exposure modeling) and their applications for occupational and environmental hygiene.

Professional Organizations

- Past Chair, Committee Member, American Industrial Hygiene Association (AIHA), Law Committee

- Past Chair, Member, AIHA Consultants Special Interest Group
- Committee Member, AIHA Indoor Environmental Quality Committee
- Past Committee Member, AIHA Environmental Affairs Committee
- Member, American Industrial Hygiene Association.
- Member, Health Physics Society
- Associate Member, American College of Occupational & Environmental Medicine.

Security Clearance (previously held)

- Department of Energy (DOE) "Q" Clearance
- Department of Defense "Top Secret" Clearance)

Work History

2013 – Present: Health and Safety Services, LLC
2011 – 2013: North Wind Solutions, LLC
2009 – 2011: North Wind Group
2004 – 2009: North Wind, Inc.
1998 – 2004: Vortex Enterprises, Inc.
1995 – 1998: S.M. Stoller Corporation
1994 – 1995: Lockheed Martin Idaho Technologies Company
1993 – 1994: EG&G Idaho, Inc.
1991 – 1993: U.S. Air Force (USAF), Bioenvironmental Engineering, Whiteman Air Force Base, MO
1987 – 1991: USAF, Bioenvironmental Engineering, Spangdahlem Air Force Base, Germany

Publications

- DOE Report, "Chemical Safety Vulnerability Working Group Report," DOE/-0396P, September 1994 – as member of US DOE-HQ Chemical Safety Vulnerability Working Group.
- B.P. Miller, *Engineering Design File - OU 7-10 Staged Interim Action Phase II Respiratory Protection Requirements*, EDF-ER-171, July 6, 2000.
- Numerous Detailed and Standard Operating Technical Procedures (TPRs), project plans (PLNs), list (LST) documents, and Test Plans for DOE prime contractors at the INL (see list below).
- Numerous Health and Safety Plans for characterization, remediation, D&D, and treatment projects at DOE, DoD, BLM, and USACE facilities (see projects below).
- Sampling and Analysis Plans for private sector clients including matrices such as sand blasting media, hazardous sludges, petroleum contaminated soils, microbial, fungal, groundwater, etc.
- More than 200 microbial investigation and remedial specification documents for microbial affected residential, commercial, and industrial structures.
- B.P. Miller, 1992, Central Missouri State University Library, Department of Safety Science and Technology Technical Reference*, Radiological Hazards: Evaluation and Control*.

CURRICULUM VITAE – BRUCE MILLER, M.S., CIH

Partial List – Technical Procedures & Health and Safety Plans

Department of Energy Projects

Technical Procedures/Test Plans

- Technical Procedure, TPR-154, "OU 7-13/14 Integrated Probing Project Operational Support Activities", DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, May 21,2001.
- Technical Procedure, TPR-1664, "Type B Probe Testing at the Cold Test Pit", DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, November 30, 2000.
- Technical Procedure, TPR-1669, "Type B Probe Datalogging Procedure", DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, April 2, 2003.
- Technical Procedure, TPR-1672, "Type B Soil Moisture Probe Installation", DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, May 30, 2002.
- Technical Procedure, TPR-1672, "Type B Visual Probe Installation", DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, July 16, 2001.
- Technical Procedure, TPR-1674, "Glove Bag Supported Sample Acquisition from Type B Probes in the Subsurface Disposal Area", DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, August 16, 2001.
- Technical Procedure, TPR-1692, "Type B+ Probe Testing", DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, September 3, 2002.
- Technical Procedure, TPR-1760, "Type A Probe Installation", DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, May 29, 2003.
- Technical Procedure, TPR-6875, "Data Acquisition System Test For OU 7-13/14 Probing Project", DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, June 11, 2003.
- Technical Procedure, TPR-1763, "Type B Tensiometer Operation and Maintenance", DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, January 24, 2002.
- Technical Procedure, TPR-178, "OU 7-13/14 Site Preparation", DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, April 23, 1999.
- Technical Procedure, TPR-179, "Probehole Installation OU 7-13/14", DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, April 23, 1999.
- Technical Procedure, TPR-1650, "Use of the Gamma Spectroscopy Logging System
- at the RWMC", DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, September 24, 2001.
- Technical Procedure, TPR-1650, "Use of the Gamma Spectroscopy Logging System
- at the RWMC", DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, September 24, 2001.
- Technical Procedure, TPR-7481, "V-Tanks – Supernate Consolidation, Sludge Removal and Tank Cleaning", DOE Idaho National Engineering & Environmental Laboratory, Technical, November 30, 2004.

- Technical Procedure, TPR-7515, "V-Tanks – Operate Off-Gas System", DOE Idaho National Engineering & Environmental Laboratory, Technical, November 22, 2004.
- Technical Procedure, TPR-7514, "V-Tanks – Operate Consolidation Tank Systems and Perform Phase I Treatment", DOE Idaho National Engineering & Environmental Laboratory, Technical, November 23, 2004.
- Technical Procedure, TPR-1629, "Overburden Screening", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, May 2, 2002.
- Technical Procedure, TPR-6649, "Geophysical Tomography", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, July 12, 2002.
- Technical Procedure, TPR-1697, "Waste Handling and Overpacking in Approved RCRA/CERCLA Storage Areas", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, April 30, 2003.
- Technical Procedure, TPR-1791, "OU 7-10–Initial Facility Startup", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, July 31, 2003.
- Technical Procedure, TPR-1788, "OU 7-10–Setup and Operate the Standby Power System", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, June 17, 2003.
- Technical Procedure, TPR-1789, "OU 7-10—Drum Repackaging", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 6, 2003.
- Technical Procedure, TPR-1792, "OU 7-10–Handle and Remove Overburden", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 4, 2003.
- Technical Procedure, TPR-1793, "OU 7-10—Retrieve Waste", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, June 10, 2003.
- Technical Procedure, TPR-1794, "OU 7-10—Waste Handling, Sampling, and Packaging", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 5, 2003.
- Technical Procedure, TPR-1795, "OU 7-10—Drum-In Materials and Drum Changeout", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, June 18, 2003.
- Technical Procedure, TPR-1796, "OU 7-10–Glove Change-Out Operations", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 1, 2003.
- Technical Procedure, TPR-1797, "OU 7-10–Waste Sample Storage and Transfer", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 6, 2003
- Technical Procedure, TPR-1798, "OU 7-10–Underburden Sampling and Sample Transfer", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, June 23, 2003

- Technical Procedure, TPR-1799, "OU 7-10—Bag-In/Bag-Out Operations", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 6, 2003
- Technical Procedure, TPR-1801, "OU 7-10 – Set Up and Operate the Dust Suppression System", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 1, 2003
- Technical Procedure, TPR-1802, "OU 7-10—Set Up and Operate the CCTV System", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, July 8, 2003
- Technical Procedure, TPR-1803, "OU 7-10–Operate The Fissile Material Monitor", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 5, 2003
- Technical Procedure, TPR-1804, "OU 7-10—Drum Assembly", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 1, 2003.
- Technical Procedure, TPR-1805, "OU 7-10—Set Up and Operate Emissions Monitoring System", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 1, 2003.
- Technical Procedure, TPR-1806, "OU 7-10–Operation of the Ventilation System", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, July 3, 2003.
- Technical Procedure, TPR-1845, "Canberra CAS-300N Operation and Testing", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, May 29, 2003.
- Technical Procedure, TPR-1832, "OU 7-10—Characterization of Facility Structures", Glovebox Excavation Method Project D&D, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, November 20, 2003.
- Technical Procedure, TPR-1833, "OU 7-10 – Decontamination of RCS", Glovebox Excavation Method Project D&D, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, July 1, 2003.
- Technical Procedure, TPR-1834, "OU 7-10 – Decontamination of the PGS", Glovebox Excavation Method Project D&D, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, July 28, 2003.
- Technical Procedure, TPR-1835, "OU 7-10—Grouting the Waste Zone", Glovebox Excavation Method Project D&D, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, December 18, 2003.
- Technical Procedure, TPR-1836, "OU 7-10 – Immobilization of Residual Contamination", Glovebox Excavation Method Project D&D, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, June 12, 2003.
- Technical Procedure, TPR-1837, "OU 7-10—Shutdown of WES Equipment", Glovebox Excavation Method Project D&D, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, November 20, 2003.
- Technical Procedure, TPR-7370, "OU 7-10 Fogging the WMF-671 Primary Containment", Glovebox Excavation Method Project D&D, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, December 20, 2003.

- Emergency Alarm Response Procedure, EAR-108, "OU 7-10–Respond to Fire", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC: OU 7-10 Emergency Alarm Response Manual, October 19, 2003.
- Emergency Alarm Response Procedure, EAR-127, "OU 7-10–Respond to Criticality Alarm", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC: OU 7-10 Emergency Alarm Response Manual, October 19, 2003.
- Emergency Alarm Response Procedure, EAR-128, "OU 7-10–Respond to Drum Explosion", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC: OU 7-10 Emergency Alarm Response Manual, October 19, 2003.
- Emergency Alarm Response Procedure, EAR-676, "Abnormal Radiological Situations", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC: OU 7-10 Emergency Alarm Response Manual, October 19, 2003.
- Emergency Alarm Response Procedure, EAR-676, "Abnormal Radiological Situations", Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC: OU 7-10 Emergency Alarm Response Manual, October 19, 2003.
- Test Plan, Requirements and Test Plan for System Operability and Integrated Testing for the OU 7-10 Glovebox Excavator Method Project, ID-PLN-1154, December 4, 2003.

DOE Program & Project Health & Safety Plans

- WSHPD, "Worker Safety and Health Program Description for Idaho National Laboratory Construction Projects,", 10 CFR 851 Compliance, Department of Energy, September 21, 2010.
- "Safety Management System and Environmental, Safety, and Health Program for Idaho National Laboratory Construction Projects," Accelerated Retrieval Project VII (ARP VII) Facility and Ancillary Structures over Pit 10 West at the Subsurface Disposal Area (SDA), SMP-NWS, Department of Energy, September 9, 2010.
- "Construction Safety Plan for Idaho National Laboratory Construction Projects," Accelerated Retrieval Project VII (ARP VII) Facility and Ancillary Structures over Pit 10 West at the Subsurface Disposal Area (SDA), SMP-NWS, Department of Energy, December 10, 2010.
- SSEHASP-10005-004, "Site-Specific Environmental Health and Safety Plan Drilling and Installation of Wells In support of Task Order 4," Los Alamos National Laboratory, July 16, 2010.
- "Contract-Specific Safety Plan for Sandia National Laboratories New Mexico Technical Area 3 - Mixed Waste Landfill Evapotranspirative Cover Construction Project," Albuquerque, New Mexico, Sandia National Laboratory, April 2009.
- NWI-LANL EP-Wide EHSP, "LANL Environmental Programs-Wide Environmental Health and Safety Plan for Projects at Los Alamos National Laboratory," (10 CFR 851 Compliant), Los Alamos National Laboratory, August 26, 2008.
- "Beryllium Hazard Assessment National Energy Technology Laboratory – Albany," U.S. Department of Energy, July 2007.
- WSHPD-1445, "Worker Safety and Health Program Description (for the Pit 9 Dismantlement and Disposition Project), 10 CFR 1851 Compliance, Department of Energy, May 22, 2007.
- SMP-1445, "Safety Management System and Environmental, Safety and Health Plan for LMAES Structures and Equipment Dismantlement and Disposal Project," Idaho National Laboratory, December 22, 2006.

- Health and Safety Plan for the Los Alamos Site Office TA-73 Airport Landfill," U. S. Department of Energy, National Nuclear Security Administration, April 2006.
- NWI-2411-001, "Health and Safety Plan for the Lower Limit of Detection Project," Advanced Mixed Waste Treatment Facility, Idaho National Laboratory, October 2005.
- "Health and Safety Plan for the Cold Demonstration in Support of In Situ TRU Waste Delineation and Waste Removal at the Hanford 218 and 618 Burial Grounds," Department of Energy – Headquarters, Washington D.C., July 2005.
- "Health and Safety Plan for the Kadlec Medical Center Building 748 Demolition," Kadlec Medical Facility, Department of Energy, Hanford Operations Office, Richland, Washington, January 2005.
- "Site Specific Health and Safety Plan for The Manganese Stockpile Removal Project," Defense Logistics Agency, Idaho National Laboratory, January 2005.
- Miller, B.P., "Health and Safety Plan for Waste Area Group 10 Track 2 Investigation of Sites CFA-54, MISC-45, and TRA-62," ICP/EXT-05-00021, January 2005.
- Miller, B.P., "Health and Safety Plan for the V-Tanks Area CERCLA Site Remediation at Test Area North, Waste Area Group 1, Operable Unit 1-10," ICP/EXT-04-00429, December 2004.
- Miller, B., "Health and Safety Plan for Los Alamos Site Office TA-73 Airport Landfill, NW-ID-2004-017, March 2004.
- Miller, B.P., "Health and Safety Plan for the Waste Area Group 10 Track II Investigation Sites," INEEL/EXT-04-00120, February 2004.
- Miller, B.P., "Health and Safety Plan for the Waste Area Group 10 Remedial Actions at Trinitrotoluene and Royal Demolition Explosive-Contaminated Sites," INEEL/EXT-03-00119, February 2004.
- Miller, B.P., Health and Safety Plan for the Vapor Vacuum Extraction with Treatment for the Organic Contamination in the Vadose Zone," INEEL/EXT-03-00467, April 2003.
- Miller, B.P., "Health and Safety Plan for the VES-SFE-20 Hot Waste Tank," INEEL/EXT-02-01436, December 2002.
- Miller, B.P., "Health and Safety Plan for the INEEL CERCAL Disposal Facility Operations," INEEL/EXT-01-01318, August 2002.
- Miller, B.P., "Environmental Restoration Model for Preparation of Site-Specific Health and Safety Plans", Bechtel BWXT, Idaho, LLC, INEEL/INT-2002-00575, March 2002.
- Miller, B.P., "Health and Safety Plan for the Waste Area Group 7 Routine Monitoring," INEEL/EXT-01-01538, November 2001.
- Miller, B.P., "Health and Safety Plan for INEEL CERCLA Disposal Facility Operations", INEEL/EXT-INEEL/EXT-01-01318, October 2001.
- Miller, B.P., "Health and Safety Plan for the OU 7-13/14 In Situ Grouting Treatability Study", INEEL/EXT-2001-00766, July 2001.
- Miller, B.P., "Health and Safety Plan for the Vapor Vacuum Extraction with Treatment for the Organic Contamination in the Vadose Zone at the Radioactive Waste Management Complex Operable Unit 7-08", INEL-96/0119, Revision 5, January 2001.
- Miller, B.P., "Health and Safety Plan for the OU 7-13/14 In Situ Vitrification Treatability Study Cold Test", INEEL/EXT-2000-01430, January 2001.
- Miller, B.P., "Health and Safety Plan for the Waste Area Group 7 Tracer Test at the Radioactive Waste Management Complex Subsurface Disposal Area", INEEL/EXT-00-01428, December 2000.
- Miller, B.P., "Health and Safety Plan for the Waste Area Group 3, Operable Unit 3-14, Injection Well Drilling and Sampling Project", INEEL/EXT-2000-00528, June 2000.

- Miller, B.P., "Health and Safety Plan for the Waste Area Group 3, Operable Unit 3-14, Tank Farm Soil Remedial Investigation", INEEL/EXT-2000-00529, June 2000.
- Miller, B.P., "Health and Safety Plan for Sampling of the Test Reactor Area VCO 145 Sodium Hydroxide Container", INEEL/EXT-2000-00699, May 2000.
- Miller, B.P., "Health and Safety Plan for the 604/605 Soil Characterization Project", INEEL/EXT-00-00432, February 2000.
- Miller, B.P., "Health and Safety Plan for the Waste Area Group 1 Post-Record of Decision Sampling", INEEL/EXT-99-01045, October 1999.
- Miller, B.P., "Health and Safety Plan for the Waste Area Group 4 Operable Unit 4-13B Monitoring Well Sampling", INEEL/EXT-99-00864, September 1999.
- Miller, B.P., "Health and Safety Plan for the Waste Area Group 1 Remedial Actions", INEEL/EXT-99-00751, September 1999.
- Miller, B.P., Health and Safety Plan for Well Installation and Sampling Outside the Radioactive Waste Management Complex Subsurface Disposal Area, INEEL/EXT-99-00527, August 1999.
- Miller, B.P., "Health and Safety Plan for the Subsurface Disposal Area/Transuranic Disposal Area Well Drilling and Sampling Project", INEEL/EXT-99-00923, June 1999.
- Miller, B.P., "Health and Safety Plan for the Operable Unit 7-13/14 Subsurface Investigation", INEEL/EXT-99-00857, May 1999.
- Miller, B.P., "Health and Safety Plan for the Pit 9 Contingency Stage I Subsurface Investigation", INEEL/EXT-98-00138, October 1998 (and revision 2, April 1999).
- Miller, B.P., "Health and Safety Plan for the Operable Unit 7-10 Contingency Project Stage I Cold Test", INEEL/EXT-98-00570, August 1998.
- Miller. B.P., "Environmental Restoration Model for Preparation of Task Specific Health and Safety Plans", INEL-94/0060, November 1994.

U.S. Army Corps of Engineers Projects

- Accident Prevention Plan for the Delineation, Characterization and Remediation of Contaminated Media at Stryker Brigade Cantonment Areas and FWA-102, Fort Wainwright, Alaska," USACE, Alaska District, July 2006.
- Site Safety and Health Plan for the Delineation, Characterization and Remediation of Contaminated Media at Stryker Brigade Cantonment Areas (Taku Garden), Fort Wainwright, Alaska," USACE, Alaska District, July 2006.
- Site Safety and Health Plan for the Delineation, Characterization and Remediation of Contaminated Media at Stryker Brigade Cantonment Areas, Fort Wainwright, Alaska," USACE, Alaska District, July 2006.
- Site Specific Health and Safety Plan for the Former Antigo Air Force Station Shallow Soils Remedial Action, Antigo, Wisconsin, NWI-ID-2006-003, USACE, Omaha District, January 2006.
- Site Safety and Health Plan and Accident Prevention Plan for the Remedial Investigation of Former Atlas "D" Missile Site 1, F.E. Warren Air Force Base, Laramie County, WY, USACE, Omaha District, July 2006.

- "Site Health and Safety Plan for the Delineation and Remediation of Contaminated Soil at Stryker Brigade Cantonment Area, Fort Wainwright, Alaska," U. S. Army Corps of Engineers, Alaska District, August 2005
- "Site Health and Safety Plan for Solid Waste Management Unit (SWMU) 12/15 - Sanitary Waste Landfill and Pesticide Disposal Area," Tooele Army Depot, Tooele, Utah, U. S. Army Corps of Engineers, Sacramento District, July 2005.
- "Site Safety and Health Plan for the Assessment of Petroleum and Metal Contaminated Soils at Various Locations within Alaska," U. S. Army Corps of Engineers, Alaska District, July 2005
- "Site Specific Health and Safety Plan Operable Unit 5 Fort Wainwright Alaska", U. S. Army Corps of Engineers, Alaska District, June 13, 2005.
- "Site-Specific Safety and Health Plan for Con/HTRW Removal at Tanaga Island and Ogliuga Island, Alaska, U. S. Army Corps of Engineers, Alaska District, May 2005
- Site Safety and Health Plan for the Assessment of Petroleum and Metal Contaminated Soils at Various Locations within Alaska, USACE, Alaska District, April 2005.
- "2004 Treatment and Operations Site-Specific Safety and Health Plan Operable Unit 2 Fort Wainwright Alaska", U. S. Army Corps of Engineers, Alaska District, March 2004.
- "Landfill Site-Specific Safety and Health Plan for Operable Unit 4 Fort Wainwright, Alaska," U. S. Army Corps of Engineers, Alaska District, May 2003
- "Site Specific Health and Safety Plan for the Remedial Action at SWMU 5 Building 600 Foundation, Drainage Pond, and Ditch Site, Deseret Chemical Depot, Tooele, Utah," NW-ID-2003-017, February 2003.
- "Site Specific Health and Safety Plan Operable Unit 4 Fort Wainwright Alaska", U. S. Army Corps of Engineers, Alaska District, June 2002.
- "Site Specific Health and Safety Plan Operable Unit 2 and 5 Fort Wainwright Alaska", U. S. Army Corps of Engineers, Alaska District, June 2002.
- "Site Specific Health and Safety Plan for SWMU 25 Remedial Action of Former Battery Shop", U. S. Army Corps of Engineers, Sacramento District, Tooele Army Depot Tooele, Utah, December 2001.
- "Site Specific Health and Safety Plan for Remedial Action of SWMU 54, Building 611 Sandblast Area and the SWMU 46, Building 611 Site", U. S. Army Corps of Engineers, Sacramento District, Tooele Army Depot Tooele, Utah, September 2001.
- "Site Specific Health and Safety Plan for SWMU 49 Remedial Action G Avenue Stormwater and Industrial Wastewater Piping and Outfall", U. S. Army Corps of Engineers, Sacramento District, Tooele Army Depot Tooele, Utah, September 2001.
- "Site Specific Safety and Health Plan for SWMU 46 Remedial Action of Used Oil Dumpsters", U. S. Army Corps of Engineers, Sacramento District, Tooele Army Depot Tooele, Utah, August 2001.

Bureau of Land Management, Forest Service, Bureau of Indian Affairs Projects

- "Site Specific Health and Safety Plan for the Manning Canyon Mine Tailing Remediation Project," Bureau of Land Management, September 2005.
- Shungnak Site Assessment Site Safety and Health Plan, Bureau of Indian Affairs, Alaska Region, Shungnak, Alaska, October 2004.

- "Site Specific Health and Safety Plan for the Idaho Lakeview Mine Project," U.S. Forest Service, August 2004,
- "Site Specific Health and Safety Plan for the Murtaugh Landfill Drilling and Monitoring System Installation," September 2003.
- "Site Specific Health and Safety Plan for the Big Ox Mill Site," June 10, 2003.
- "Site Specific Health and Safety Plan for the Upper Constitution Water Treatment System Design/Build," October 20, 2002.
- "Site Specific Health and Safety Plan for the Nabob Mill Tailings Groundwater Diversion System Design/Build", Bureau of Land Management, October 10, 2002
- "Site Specific Health and Safety Plan for the Lava Creek AML Sampling, Removal, and Rehabilitation Project" Bureau of Land Management, September 21, 2002
- "Site Specific Health and Safety Plan for the Menan Butte Asbestos Pipe Removal Project", Bureau of Land Management, September 12, 2002
- "Site Specific Health and Safety Plan for the Twin Peaks Removal Action", Bureau of Land Management, February 15, 2002.
- "Site Specific Health and Safety Plan for the Upper Snake River District Offices Combined Chemical Removal Actions", Bureau of Land Management, December 8, 2001.
- "Site Specific Health and Safety Plan for the Currier Gulch Regrading/Reseeding", Bureau of Land Management, October 27, 2001.
- "Site Specific Health and Safety Plan for the Moran Tunnel Maintenance Construction Actions", Bureau of Land Management, October 25, 2001.
- "Site Specific Health and Safety Plan for the Cloward Crossing and Pass Creek Dump Removals", Bureau of Land Management, October 19, 2001.
- "Site Specific Health and Safety Plan for the Silverton Site Tailing Removal and Soil Sampling Evaluation", Bureau of Land Management, October 16, 2001.
- "Site Specific Health and Safety Plan for the Goldback and Motherlode Rock Dump Removal Action", Bureau of Land Management, October 3, 2001.

Department of Defense, NASA and Commercial Client Projects

- "Health and Safety Plan for Environmental Activities at NASA White Sands Test Facility (WSTF)", September 9, 2009.
- Accident Prevention Plan (APP) for B#2524 Clean Bullet Trap Project," Navy Facilities Engineering Command, Public Works Center – Crane Detachment, Department of the Navy Naval Facilities Engineering Command, February 5, 2007.

- "Phase II RCRA Facility Investigation Health and Safety Plan for Site AOC R (SS43) Charleston Air Force Base, South Carolina," United States Air Force, October 2005.
- "Site Specific Health and Safety Plan for Hurricane Katrina Damage Repairs (Plan A) for Buildings 3101, 3821, 3823, 3501, 4605, Fishing Piers, and Grounds Restoration," Keesler AFB, Mississippi, United States Air Force, October 2005.
- "Site Specific Health and Safety Plan for Hurricane Katrina Damage Repairs (Plan B) for Marina Facilities, Buildings 6726 and 6737 Restoration," Keesler AFB, Mississippi, United States Air Force, October 2005.

CURRICULUM VITAE – BRUCE MILLER, M.S., CIH

- "Site Specific Health and Safety Plan/Accident Prevention Plan for Facilities Layup Implementation and Caretaker Maintenance at the Naval Computer and Telecommunications Area Master Station, Extremely Low Frequency Naval Radio Transmitter Facility, Clam Lake, WI," Department of the Navy, Naval Facilities Engineering Command, October 2005.

- "Site Specific Health and Safety Plan/Accident Prevention Plan for Facilities Layup Implementation and Caretaker Maintenance at the Naval Computer and Telecommunications Area Master Station, Extremely Low Frequency Naval Radio Transmitter Facility, Republic, MI," Department of the Navy, Naval Facilities Engineering Command, October 2005.

- "Site Specific Health and Safety Plan for Cleanup of Tank 1A JP-8 Fuel Release," Mountain Home AFB, Idaho, United States Air Force, September 2005.
- "Site Specific Health and Safety Plan for Repair of Air Force Special Operations Command (AFSOC) Annex, Building 90333," Hurlburt Field, Florida, United States Air Force, August 2005.
- "Site Specific Health and Safety Plan for Construction of the Marina Operations Building and Fuel Supply System," Hurlburt Field, Florida, United States Air Force, August 2005.
- "Site Specific Health and Safety Plan for the Repair and Upgrade of the Wastewater Treatment Plant," Hurlburt Field, Florida, United States Air Force, July 2005.
- "Site Specific Health and Safety Plan for Bridge Construction on Whitbeck Street, Hurlburt Field, Florida," United States Air Force, July 2005.
- "Health and Safety Plan for the RCRA Facility Investigation Phase III," White Sands Missile Range, NM, January 2004.
- "Site Specific Health and Safety Plan Construction of Junior Non-Commissioned Housing Fort Wainwright, Alaska," February 2004.
- "Site Specific Health and Safety Plan for the Site 10, Rubble Disposal Area Naval Radio Receiver Facility Naval Computer and Telecommunications Station Imperial Beach, California", Department of the Navy, May 2002.
- "Site Specific Safety and Health Plan FY02 Dormitory Elmendorf Air Force Base", Department of the Air Force, Anchorage, Alaska, April 2002.
- "Site-Specific Health and Safety Plan for the Inventory Reduction of Bulk Nitrocellulose Project", (Private Client) East Camden, Arkansas, February 2002.
- "Site Specific Health and Safety Plan Groundwater Monitoring Project Hazardous Waste Landfill/Enhanced Hazardous Waste Landfill", Rocky Mountain Arsenal, October 2001.
- Miller, B.P., "Site-Specific Health and Safety Plan for the North OB/OD Burn Pad Soil Excavation Project", Yuma Proving Ground, December 1999.

AFFIDAVIT
R. DELLO IOIO

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

R. DELLO IOIO, being first duly sworn on oath, deposes and declares as follows:

1. I am above the age of 18, and I am competent to make this affidavit.
2. I am a former Home Instruction teacher since September 2015 for the New York City Department of Education (DOE) within Home Instruction Schools located at 3450 East Tremont Avenue, Bronx, NY 10465 DOE territory.
3. Prior to serving as a Home Instruction Teacher, I worked in various other teacher capacities within the DOE for a total of approximately 17 years until I was constructively discharged as a teacher on 3/10 2022 for refusing to submit to the Covid-19 vaccine. See **Exhibit A**
4. Home Instruction teaching is when a teacher goes into the home of a student and provides instruction or utilizes online computer technology to instruct a student wherever they are (home or hospital) due to some grave injury or illness the child may have. Students in the home instruction program do not attend school in the traditional school building.
5. However, I was placed on leave without pay starting 10/4/2021 after exercising my right to request to be exempt from the Covid-19 requirement issued by the New York City Department of Health.
6. On 9/1/21, I received an email from the Division of Human Capital that I should receive a vaccination by 9/27/21. See **Exhibit B**
7. On 9/18, I received an email from the Division of Human Capital that if I wanted to be exempt from the vaccine requirement that I was required to submit a request for a Religious or Medical Exemption through the DOC online automated portal Solas. No due date was stated. I was never notified by my principal or union of any deadline. See **Exhibit C**
8. The Division of Human Capital kept sending emails that vaccination proof should be submitted by 9/27/21. There was no religious exemption deadline stated.
9. On 9/24/21, I was emailed by the DOE Vaccination Team to submit vaccination proof. It was stated in the end, "If you have an approved exemption or leave your status will be updated shortly." See **Exhibit D** No deadline was stated.

10. In all my correspondences were with the DOE. I was never notified by the UFT how to construct a religious exemption. I was never offered any suggestions through the UFT about the Arbitration Agreement that they made with the DOE.
11. I was never given any direction or information by my supervisors, the DOE or UFT how to ask for a reasonable accommodation. The Arbitration Agreement of 9/10/21 was never properly explained to us. My Union Representative. never got involved.
12. I was never offered any safety equipment that would keep me safe from the airborne virus that causes Covid-19 and neither did any discuss what could be done to modify my job to make it safe for me and all the children that I taught.
13. In my entire 17 years as a teach for the DOE, I had never received any workplace safety training and neither was I instructed by the OSHA regulations on how to achieve and maintain a safe workplace during a communicable disease Pandemic.
14. All that I was told through the various communications was that it was "unsafe" to allow unvaccinated DOE employees into any of the DOE schools or buildings. However, I did not work in a DOE building, so it was my understanding that the vaccine requirements placed on DOE employees really did not apply to me.
15. Nevertheless, I submitted a request to be exempt from the vaccine requirement by submitting, as was instructed by DOC, a Religious Exemption on 9/20/21 through this online application called Solas. In my submission I explained that the basis for my refusal to submit to the DOE vaccine requirement was based on my Christian faith adheres to the Bible and its teaching which these vaccines violated. Mostly the fact that aborted stem cells were involved in the origination of the three Covid-19 shots makes their reception sinful to me. See **Exhibit E**
16. On 9/22, my request was denied through email by HR Connect online portal. See **Exhibit F**
17. No one ever called me or email me to ask any questions about how I thought I could continue to do my job and keep myself safe and the students that I teach safe during the Pandemic. There was no human dialog between myself and anyone at the DOE.

18. The denial letter, however, stated that my request for vaccine exemption was denied because my written submission failed to meet the criteria for a religious based accommodation. However, I was never provided any information regarding what the "criteria" was that would provide me with an accommodation.

19. The denial letter stated, in summary:

> Per the Emergency Order by the New York City Commissioner of Health, unvaccinated employees cannot work in a Department of Education (DOE) building or other site with contact with DOE students, employees, or families without posing a direct threat to health and safety. We cannot offer another worksite as an accommodation as that would impose an undue hardship (i.e. more than a minimal burden) on the DOE and its operations. See **Exhibit G**

20. Although I was denied, I learned that other teachers were allowed to remain on the job unvaccinated and were allowed to teach students through the computer online remote education option.

21. I was only given one day to submit my appeal. Also, there was no directive why it was denied. Therefore on 9/23/21 I submitted my appeal with a note in the box that I would submit supporting documentation at my arbitration hearing. See **Exhibit H**

22. On 9/30/21 my appeal was denied with no reason why it was denied. I was never given a hearing. See **Exhibit I**

23. I retained a lawyer and on 10/8/21, my lawyer Joshua Pepper wrote Human Resources to inquire why I was never permitted a hearing to plead by case. See **Exhibit J.**

24. On 10/8/21, Karen King from the United Federation of Teachers responded back that not all individuals were granted a hearing. See **Exhibit K**

25. On 11/19, I received an email from the Division of Human Capital that I could re-appeal through a citywide panel. Directions were given how to resubmit it through Solas. See **Exhibit L**

26. I have been placed on Leave Without Pay since 10/4/21 See **Exhibit M**. On 12/2/21, I submitted a re appeal to the City-Wide Appeal Panel with additional information explaining that my teaching assignment was remote and that there would be no undue hardship to allow me to continue to work as I had previously done throughout the pandemic.

27. Despite the additional information about the remote state of my teaching, on 1/7/21, I received an email to provide additional information by 1/14/22. See **Exhibit N**.
28. During the several month-long process, I received weekly notices from the DOC instructing to get vaccinated.
29. After the denial, I filed a complaint with the EEOC claiming wrongful termination, harassment based on my religious faith and based on my health status as an unvaccinated person under the ADA.
30. Then on March 7, 2022, I received the email stating that I would be subject to termination, but I have not received a "good cause" disciplinary action/charge from the DOE pursuant to New York City Education Law 3020a. to permanently terminate me.
31. On 11/15/21 and 11/28/21 the Court determined that the agreement between the DOE and the City only allowing religious exemptions for the church was unconstitutional.
32. Since 10/4/21, this experience has put a tremendous amount of emotional stress on my life in ways that I could never imagine. The choices given either go on leave without pay or take a severance which included medical or be terminated and lose everything has devastated me. I own a house, I am not receiving any financial assistance. I have a mortgage to pay. Worrying about food, expenses have been overwhelming. I have had to depend on my family and friends to get me through this terrible ordeal. I have been depressed and handicapped because I am not allowed to work to support myself.
33. Since this vaccine mandate has taken effect, I am having trouble seeking employment in education. There are no employment options due to the fact I am unemployable in the city. There are no other alternatives but to leave the city and seek employment in another state or region. I have invested my time and my livelihood here in the city and it has destroyed my opportunities to succeed in this field.
34. Allowing me to continue to work remote through online computer equipment does not place any undue hardship on the DOE.
35. Also, the DOE has granted other teachers religious exemptions from the vaccine and have allowed them to continue to work in the schools.

36. I have recently learned through my contacts with Union leadership that the DOE has a shortage of approximately 1,000 teachers needed for remote online teaching because there are many more students demanding online instruction, but yet they are hiring new teachers and granting them the remote work positions, yet the DOE denied me the ability to continue to work remote.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Dated this 15 day of April, 2022.

Remo Dello Ioio

R. DELLO IOIO

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 15 day of April 2022, 2021, by R. DELLO IOIO, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.

Signature of Notary Public

[Affix Notary Seal]

KEVIN T. McCARTHY
Notary Public, State of New York
No. 02MC6320693
Qualified in Rockland County
Commisssion Expires March 18, 2023

EXHIBIT A

COVID-19 Vaccination Mandate Related Exemption or Accommodation Application

Division of Human Capital <DHC@schools.nyc.gov>

Sat 9/18/2021 10:49 AM

To: Division of Human Capital <DHC@schools.nyc.gov>

Dear Colleagues,

We are writing to let you know that DOE staff members may now apply in SOLAS for a COVID-19 Vaccination Mandate Related Exemption or Accommodation.

This COVID-19 Vaccine Related Exemption and Accommodation application is for:

- Religious Exemption requests to the mandatory vaccination policy
- Medical Exemption requests to the mandatory vaccination policy
- Medical Accommodation requests where an employee is vaccinated but is unable to mount an immune response to COVID-19 due to preexisting immune conditions.

Applications should be made via the following process:

- Applications must be made using the Self-Service Online Leave Application System (SOLAS).
- In SOLAS, employees should select the initial option to "Request Accommodation" and then the option to apply for an Exemption and Accommodation for COVID Vaccine-Related Reasons, and then indicate the category for the application.
- All applications require supporting documentation which must be submitted at the time of application.

More information can be found on the Coronavirus Staff Update InfoHub page.

Thank you,

NYCDOE Division of Human Capital

Your application for a COVID-19 Vaccine Related Exemption or Accommodation has been received.

EXHIBIT B

solas_donotreply@schools.nyc.gov <solas_donotreply@schools.nyc.gov>
Mon 9/20/2021 8:32 AM
To: DelloIoio Remo (09X505) <RDelloIoio@schools.nyc.gov>

09/20/2021

Case#: A75876
File# 0755802
EMP ID: 381976

Dear REMO DELLO IOIO,

Thank you for submitting your application online!

Type of Application: COVID-19 Vaccine Related Exemption or Accommodation

Application Communications:
During your application process, all communications will be sent to your DOE e-mail account. You must continue to check your DOE e-mail, even if you listed a different preferred email address.

Changes to Your Application:
Unfortunately, you cannot make changes to your submitted application. If you need to make changes, you must withdraw this application and re-submit your request. To withdraw the application please log back into SOLAS: https://dhrnycaps.nycenet.edu/SOLAS.

Questions:
For technical questions regarding the SOLAS system, please call HR Connect at 718-935-4000 and refer to the case number at the top of this notice.For more information, you may also visit the HR Connect Employee Portal by logging in with your DOE/Outlook User ID and password at https://doehrconnect.custhelp.com.

Sincerely,

HR Connect
Medical, Leaves, and Records Administration

Please do not reply to this message via e-mail. This email address is automated.

Ref Number : GX5897335 N3350 ADA Submission

EXHIBIT C

Your COVID-19 Vaccine Religious Exemption Application - Determination

solas_donotreply@schools.nyc.gov <solas_donotreply@schools.nyc.gov>

Wed 9/22/2021 7:43 PM

To: DelloIoio Remo (09X505) <RDelloIoio@schools.nyc.gov>

09/22/2021

Case#: A75876
File# 755802
EMP ID: 381976

Dear REMO DELLO IOIO,

We have reviewed your application and supporting documentation for a religious exemption from the DOE COVID-19 vaccine mandate. Your application has failed to meet the criteria for a religious based accommodation. Per the Order of the Commissioner of Health, unvaccinated employees cannot work in a Department of Education (DOE) building or other site with contact with DOE students, employees, or families without posing a direct threat to health and safety. We cannot offer another worksite as an accommodation as that would impose an undue hardship (i.e. more than a minimal burden) on the DOE and its operations.

This application was reviewed in accordance with applicable law as well as the Arbitration Award in the matter of your union and the Board of Education regarding the vaccine mandate.

Under the terms of the Arbitration Award, you may appeal this denial to an independent arbitrator. If you wish to appeal, you must do so within one school day of this notice by logging into SOLAS https://dhrnycaps.nycenet.edu/SOLAS and using the option "I would like to APPEAL". As part of the appeal, you may submit additional documentation and also provide a reason for the appeal.

Sincerely,

HR Connect
Medical, Leaves, and Records Administration

Please do not reply to this message via e-mail. This email address is automated.

Ref Number : GX5918277 N3418 COVID-19_VAX_ReligiousExempt_GenDenial

EXHIBIT D

Your Appeal

solas_donotreply@schools.nyc.gov <solas_donotreply@schools.nyc.gov>
Thu 9/23/2021 3:42 PM
To: DelloIoio Remo (09X505) <RDelloIoio@schools.nyc.gov>

09/23/2021

Case#: A75876
File# 0755802
EMP ID: 381976

Dear REMO DELLO IOIO,

This notification confirms the receipt of your appeal of your denial of a COVID-19 vaccine mandate related exemption or accommodation. This appeal and your application materials and documentation are being forwarded to Scheinman Arbitration and Mediation Services ("SAMS") and independent arbitrators convened by SAMS who will consider your appeal.

Supplemental documentation may be submitted within 48 hours of your filing of the appeal to SAMS by emailing the applicable address below. Please include your name and union in the subject line and send from your DOE email.

UFT: AppealsUFT@ScheinmanNeutrals.com
CSA: AppealsCSA@ScheinmanNeutrals.com
Local 237: AppealsTeamstersLocal237@ScheinmanNeutrals.com
Local 891: AppealsLocal891IUOE@ScheinmanNeutrals.com

Sincerely,

HR Connect
Medical, Leaves, and Records Administration

Please do not reply to this message via e-mail. This email address is automated.

Ref Number : GX5925701 N3425 COVID-19_VAX_Exemption_Appeal

EXHIBIT E

DOE Vaccination Portal

NYCDOE <noreply@schools.nyc.gov>

Fri 9/24/2021 10:18 AM

To: DelloIoio Remo (09X505) <RDelloIoio@schools.nyc.gov>

NYC Department of Education

Dear Colleague,

You are receiving this email because our records indicate that you have not yet used the **DOE Vaccination Portal** to submit proof that you have received at least one dose of a COVID-19 vaccine, as required by the DOE's COVID-19 Vaccine Mandate. **The deadline to upload this information is September 27.**

If you fail to meet this deadline, you will be removed from payroll and placed on Leave Without Pay status (LWOP) beginning Tuesday, September 28, unless you are on an approved vaccine exemption or leave.

While you are on Leave Without Pay (LWOP), you:

- Cannot enter your work or school site until you have taken corrective action to comply with the terms of the mandate
- Cannot work and will not receive compensation
- Cannot use annual leave, CAR or sick time

In order to avoid being placed on LWOP status, you must use the DOE Vaccination Portal to upload your proof of vaccination no later than September 27.

If you have an approved exemption or leave your status will be updated shortly. Employees who are on an annual or sick leave on 9/28 and have not uploaded proof of vaccination by 9/27 will also be placed on a LWOP. (Employees in certain titles including substitutes will be placed in another inactive status, not a leave without pay.)

For more information about where to get vaccinated, visit vaccinefinder.nyc.gov or call 877-VAX-4-NYC.

For the latest COVID-19 staffing updates, please visit the Coronavirus Staff Update InfoHub page.

If you encounter technical issues using the Vaccination Portal, please contact the DOE Help Desk by opening a ticket online or calling 718-935-5100.

Sincerely,

DOE Vaccination Portal Team

EXHIBIT F

SCHEINMAN ARBITRATION AND MEDIATION SERVICES

---------- X

In the Matter of the Arbitration

X

between

X

NEW YORK CITY DEPARTMENT OF EDUCATION **Re: UFT.1726**

X

and

X

REMO DELLO IOIO

X

---------- X

Issue: Religious Exemption

Date of Hearing: _____

Award

APPLICATION FOR EXEMPTION: GRANTED [] DENIED [X] OTHER []

_____

_____

_____

_____ 09/30/2021

Arbitrator **Date**

Barry Peek

EXHIBIT G

DOE Vaccination Portal

NYCDOE <noreply@schools.nyc.gov>

Thu 9/30/2021 10:27 AM

To: DelloIoio Remo (09X505) <RDelloIoio@schools.nyc.gov>

Department of Education

Dear Colleague,

You are receiving this email because our records indicate that you have not yet used the **DOE Vaccination Portal** to submit proof that you have received at least one dose of a COVID-19 vaccine, as required by the DOE's COVID-19 Vaccine Mandate. **The deadline to upload this information is 11:59pm on Friday, October 1.**

If you fail to meet this deadline, you will be removed from payroll and placed on Leave Without Pay status (LWOP) beginning Monday, October 4, unless you are on an approved vaccine exemption or leave, you will not receive compensation. Additionally you may not use annual leave, CAR or sick time in lieu of Leave Without Pay.

In order to avoid being placed on LWOP status, you must use the DOE Vaccination Portal to upload your proof of vaccination no later than October 4.

If you have an approved vaccine exemption, or an approved leave your status will be updated shortly. Employees in certain titles including substitutes will be placed in another inactive status, not a leave without pay.

For more information about where to get vaccinated, visit vaccinefinder.nyc.gov or call 877-VAX-4-NYC.

For the latest COVID-19 staffing updates, please visit the Coronavirus Staff Update InfoHub page.

If you encounter technical issues using the Vaccination Portal, please contact the DOE Help Desk by opening a ticket online or calling 718-935-5100.

Sincerely,

DOE Vaccination Portal Team

EXHIBIT H

Notification of Leave Without Pay - PLEASE READ

solas_donotreply@schools.nyc.gov <solas_donotreply@schools.nyc.gov>
Tue 10/5/2021 8:42 PM
To: DelloIoio Remo (09X505) <RDelloIoio@schools.nyc.gov>

10/05/2021

Case#: A75876

Dear REMO DELLO IOIO,

As you are aware, the independent arbitrator has denied your appeal for a medical or religious exemption to the COVID-19 vaccine mandate. As a consequence, **you are being placed on a Leave Without Pay (LWOP) because you are not in compliance with the COVID-19 Vaccine Mandate. Your LWOP status goes into effect beginning with the first work day after you received the notification from the arbitrator** (which may be a different date than this notice).

While you are on Leave Without Pay (LWOP), you:

- Cannot work and will not receive compensation (but your medical benefits will continue)
- Cannot use annual leave, CAR or sick time
- Cannot enter your work or school site or work off-site
- Cannot reach out to students or families

In order to return to work and be removed from LWOP status, you must complete two steps using the **DOE Vaccination Portal**:

- Upload proof that you have received your first dose of a COVID-19 vaccine. **Proof of COVID-19 Vaccine can be an image of your vaccination card, NYS Excelsior Pass, or another government record** and
- E-sign the attestation stating that you are willing to return to your worksite within seven calendar days of submission.

Once you have completed these two steps, your HR Director and supervisor will also be notified and will work with you to plan your return date.

If you have already been vaccinated and you have uploaded this information, you may report to work as usual in person and you will be put back on active status. If you get vaccinated in the future, please follow the steps above and be in contact with your school about a return date.

Please be advised that if you do not intend to return to the DOE, you will need to return all DOE property, including computers, IDs, blackberries, and keys, immediately. Failure to return any DOE property that has been assigned to you will delay the processing of your final payment and any payout of leave time.

Employees represented by UFT or CSA who have been placed on LWOP due to vaccination status may select (in SOLAS) special separation or leave options per the arbitration award:

- **Separation with benefits** (available in SOLAS as of Monday, October 4): Employees choosing to separate under this option:
    - **Must share their intention to separate via SOLAS by October 29, 2021.**

- Will be required to waive their rights to challenge the involuntary resignation, including, but not limited to, through a contractual or statutory disciplinary process
- Will be eligible to be reimbursed for unused CAR/sick leave on a one-for-one basis at the rate of 1/200th of the employee's salary at departure per day, up to 100 days, to be paid out following the employee's separation
- Will be eligible to maintain health insurance through September 5, 2022, unless they have health insurance available from another source.

- **Extend the leave without pay due to vaccination status through September 5, 2022** (available in SOLAS as of Monday, November 1 through November 30, 2021):

    - Employees choosing this option will also be required to waive their rights to challenge their involuntary resignation, including, but not limited to, through a contractual or statutory discipline process
    - They will remain eligible for health insurance through September 5, 2022
    - Employees who have not returned by September 5, 2022 shall be deemed to have voluntarily resigned

- Beginning December 1, 2021, the DOE will seek to unilaterally separate employees who have not selected one of the options above or otherwise separated service.

For more information about where to get vaccinated, visit vaccinefinder.nyc.gov or call 877-VAX-4-NYC. For the latest COVID-19 staffing updates, please visit the Coronavirus Staff Update InfoHub page.

Sincerely,
NYCDOE Division of Human Capital

Ref Number : GX5971980 N3446 COVID_Vax_LWOP

EXHIBIT J

Law Office of Joshua Pepper, PLLC

30 Wall Street, 8th floor
New York, NY 10005-2205
(212) 804-5768
jpepper@jpepperesq.com

October 8, 2021

Human Resources
NYC Department of Education
65 Court Street, Rm 102
Brooklyn, NY 11201

Re: Remo Dello Ioio, File No. 755802

To whom it may concern:

I write on behalf of my client Mr. Remo Dello Ioio. He has been employed with you for nineteen years. On September 20, 2021, soon after the Department of Education ("DOE") implemented its vaccine mandate, Mr. Dello Ioio applied for a religious exemption from that mandate, pursuant to DOE policy. On September 22, he was informed that his request had been denied. The denial notice contained no information regarding the reason for the denial. As per the instructions he was given, Mr. Dello Ioio appealed the denial through the portal the next day. He did not submit additional documentation because, without explanation for the denial, Mr. Dello Ioio wanted to provide all supporting documentation at an arbitration hearing. His understanding was that all applicants would be given such hearings, and I have heard that the independent arbitrator is interviewing DOE employees who have requested religious exemptions.

On September 30, Mr. Dello Ioio received a notice that his appeal was denied with no explanation. The next day, he received another notice stating that his appeal was pending. This contradiction gave him reason to believe that he would receive an arbitration hearing as he had originally thought. But on October 5, he received notice that an independent arbitrator had denied his appeal.

Mr. Dello Ioio has found this process to be highly confusing. He has never been given an explanation why his appeal was denied. Although he did not submit supporting documentation through the portal, this was in reliance on his understanding that he would have the opportunity to do so at his hearing. On my client's behalf, I formally request that he be given a hearing or interview so that he may present his argument in full as to his entitlement to a religious exemption from the DOE's vaccine mandate.

Very truly yours,

Joshua Pepper

Joshua Pepper

cc: Michael Mulgrew (via email)
Mike Sill (via email)

Fwd: Remo Dello Ioio #755802

Joshua Pepper <jpepper@jpepperesq.com> Fri, Oct 8, 2021 at 2:25 PM
To: Remo Dello Ioio <rdelloioio2@gmail.com>

EXHIBIT K

FYI

---------- Forwarded message ---------
From: **Karen King** <KKing@uft.org>
Date: Fri, Oct 8, 2021, 2:16 PM
Subject: RE: Remo Dello Ioio #755802
To: Joshua Pepper <jpepper@jpepperesq.com>

Hello,

Thank you for your email. Not everyone who has filed an appeal will have a hearing. The documents submitted are reviewed by the arbitrator and if, in the arbitrator's sole discretion, a hearing is warranted the arbitrator will schedule. Many were decided on the papers submitted.

Karen King

Administrative Assistant to the Assistant Secretary &

Director of Personnel, Payroll, and Special Projects

United Federation of Teachers

50 Broadway, 13th Floor

New York, N.Y. 10004

kking@uft.org

From: Joshua Pepper <jpepper@jpepperesq.com>
Sent: Friday, October 08, 2021 12:37 PM
To: Michael Mulgrew <MMulgrew@uft.org>; Michael Sill <MSill@uft.org>
Subject: Remo Dello Ioio #755802

Please see attached.

--

Joshua Pepper

Law Office of Joshua Pepper

30 Wall Street, 8th floor

New York, NY 10005

212-804-5768

ltr.requesting.hearing.10.8.21.pdf
78K

EXHIBIT N

Your Appeal to the Citywide Panel - Additional Information

Division of Human Resources <DHR@schools.nyc.gov>

Fri 1/7/2022 7:06 PM

Colleague,

Your appeal of your religious exemption to the COVID-19 vaccine mandate has been submitted to the Citywide Appeal Panel. To assist the Citywide Appeal Panel in reviewing your religious exemption request, please provide the following additional information by Friday, January 14, 2022 at 8:00 pm:

1. Whether you have previously taken any vaccinations.
2. If you have stated that you have a personal religious aversion to foreign or other impermissible substances entering your body, please describe this with more clarity, including describing any other commonly used medicines, food/drink and other substances you consider foreign/impermissible or that violate your religious belief.
3. If you have stated that you cannot take the vaccine because of an objection to using derivative fetal cells in the development of a vaccine, please provide more information about your stated objection and whether there are other medications or vaccinations that you do not take because of this objection.
4. Any additional occasions you have acted in accordance with the cited belief outside the context of a COVID-19 vaccination, to the extent not previously described in the documentation already submitted.

To submit this information, please follow the steps below:

- Written responses should be sent in as an attached document to PanelAppealUpdate@schools.nyc.gov (*Do not send, copy, or reply to this email.)*
- Written responses must be received by email by Friday, January 14, 2022 at 8:00 pm
- Only attach new information/document - do not resend documentation that was already provided.
- Include your Name and Employee ID number in the subject line of your email.

If additional information is not provided, the Panel will consider your appeal based on the materials/information you already submitted through SOLAS.

Thank you,

NYCDOE Division of Human Resources

EXHIBIT O

Reasonable Accommodation Appeal Determination

noreply@salesforce.com <noreply@salesforce.com>
on behalf of
NYC Employee Vaccine Appeals <vaxappeal@dcas.nyc.gov>
Mon 3/7/2022 10:15 AM

To: DelloIoio Remo (09X505) <RDelloIoio@schools.nyc.gov>

The City of New York Reasonable Accommodation Appeals Panel has carefully reviewed your Agency's determination, all of the documentation submitted to the agency and the additional information you submitted in connection with the appeal. Based on this review, the Appeals Panel has decided to deny your appeal. This determination represents the final decision with respect to your reasonable accommodation request.

The decision classification for your appeal is as follows: The employee has failed to establish a sincerely held religious belief that precludes vaccination. DOE has demonstrated that it would be an undue hardship to grant accommodation to the employee given the need for a safe environment for in-person learning

For all employees other than DOE employees: Pursuant to the City of New York's policy concerning the vaccine mandate, you now have **three business days** from the date of this notice to submit proof of vaccination. If you do not do so, you will be placed on a leave without pay (LWOP).

For Department of Education (DOE) employees: Pursuant to New York City Department of Education policy, you have seven calendar days to extend your Leave Without Pay or return to work. If you do neither, you will be subject to termination. For further information and instructions, please see DOE Denial of Appeal Information.

New York City Dept. of Education

EXIBIT #1

ORDER OF THE COMMISSIONER OF HEALTH AND MENTAL HYGIENE TO REQUIRE COVID-19 VACCINATION FOR DEPARTMENT OF EDUCATION EMPLOYEES, CONTRACTORS, AND OTHERS

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

WHEREAS, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 3.01(d) of the New York City Health Code ("Health Code"), the existence of a public health emergency within the City as a result of COVID-19, for which certain orders and actions are necessary to protect the health and safety of the City of New York and its residents, was declared; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the "Charter"), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (the "Department") extends; and

WHEREAS, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

WHEREAS, the U.S. Centers for Disease Control ("CDC") reports that new variants of COVID-19, identified as "variants of concern" have emerged in the United States, and some of these new variants which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible than earlier variants; and

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS New York State has announced that, as of September 27, 2021 all healthcare workers in New York State, including staff at hospitals and long-term care facilities, including nursing homes, adult care, and other congregate care settings, will be required to be vaccinated against COVID-19 by Monday, September 27; and

WHEREAS, section 17-104 of the Administrative Code of the City of New York directs the Department to adopt prompt and effective measures to prevent the communication of infection diseases such as COVID-19; and

WHEREAS, in accordance with section 17-109(b) of such Administrative Code, the Department may adopt vaccination measures in order to most effectively prevent the spread of communicable diseases; and

WHEREAS, pursuant to Section 3.07 of the Health Code, no person "shall do or assist in any act which is or may be detrimental to the public health or to the life or health of any individual" or "fail to do any reasonable act or take any necessary precaution to protect human life and health;" and

WHEREAS, the CDC has recommended that school teachers and staff be "vaccinated as soon as possible" because vaccination is "the most critical strategy to help schools safely resume] full operations… [and] is the leading public health prevention strategy to end the COVID-19 pandemic;" and

WHEREAS the New York City Department of Education ("DOE") serves approximately 1 million students across the City, including students in the communities that have been disproportionately affected by the COVID-19 pandemic and students who are too young to be eligible to be vaccinated; and

WHEREAS, a system of vaccination for individuals working in school settings or other DOE buildings will potentially save lives, protect public health, and promote public safety; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

WHEREAS, on July 21, 2021, I issued an order requiring staff in public healthcare and clinical settings to demonstrate proof of COVID-19 vaccination or undergo weekly testing; and

WHEREAS, on August 10, 2021, I issued an order requiring staff providing City operated or contracted services in residential and congregate settings to demonstrate proof of COVID-19 vaccination or undergo weekly testing;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and hereby order that:

1. No later than September 27, 2021 or prior to beginning employment, all DOE staff must provide proof to the DOE that:
    a. they have been fully vaccinated; or
    b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or
    c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.

2. All City employees who work in-person in a DOE school setting or DOE building must provide proof to their employer no later than September 27, 2021 or prior to beginning such work that:
    a. they have been fully vaccinated; or
    b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or

c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.

3. All staff of contractors of DOE and the City who work in-person in a DOE school setting or DOE building, including individuals who provide services to DOE students, must provide proof to their employer no later than September 27, 2021 or prior to beginning such work that:
   a. they have been fully vaccinated; or
   b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or
   c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.

   Self-employed independent contractors hired for such work must provide such proof to the DOE.

4. All employees of any school serving students up to grade 12 and any UPK-3 or UPK-4 program that is located in a DOE building who work in-person, and all contractors hired by such schools or programs to work in-person in a DOE building, must provide proof to their employer, or if self-employed to the contracting school or program, no later than September 27, 2021 or prior to beginning such work that:
   a. they have been fully vaccinated; or
   b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or
   c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.

5. For the purposes of this Order:

   a. "DOE staff" means (i) full or part-time employees of the DOE, and (ii) DOE interns (including student teachers) and volunteers.

   b. "Fully vaccinated" means at least two weeks have passed after a person received a single dose of a one-dose series, or the second dose of a two-dose series, of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization.

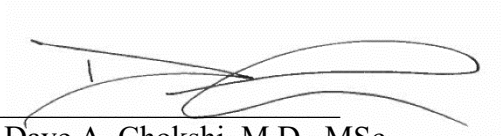
   c. "DOE school setting" includes any indoor location, including but not limited to DOE buildings, where instruction is provided to DOE students in public school kindergarten through grade 12, including residences of pupils receiving home instruction and places where care for children is provided through DOE's LYFE program.

d. "Staff of contractors of DOE and the City" means a full or part-time employee, intern or volunteer of a contractor of DOE or another City agency who works in-person in a DOE school setting or other DOE building, and includes individuals working as independent contractors.

e. "Works in-person" means an individual spends any portion of their work time physically present in a DOE school setting or other DOE building. It does not include individuals who enter a DOE school setting or other DOE location only to deliver or pickup items, unless the individual is otherwise subject to this Order. It also does not include individuals present in DOE school settings or DOE buildings to make repairs at times when students are not present in the building, unless the individual is otherwise subject to this Order.

6. This Order shall be effective immediately and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter or modify this Order pursuant to Section 3.01(d) of the Health Code.

Dated: August 24th, 2021



Dave A. Chokshi, M.D., MSc
Commissioner

EXIBIT #3

ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION FOR
DEPARTMENT OF EDUCATION
EMPLOYEES, CONTRACTORS, VISITORS, AND OTHERS

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

WHEREAS, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the "Charter"), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (the "Department") extends; and

WHEREAS, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

WHEREAS, the U.S. Centers for Disease Control and Prevention ("CDC") reports that new variants of COVID-19, identified as "variants of concern" have emerged in the United States, and some of these new variants which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible than earlier variants; and

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, the CDC has recommended that school teachers and staff be "vaccinated as soon as possible" because vaccination is "the most critical strategy to help schools safely resume full operations [and] is the leading public health prevention strategy to end the COVID-19 pandemic;" and

WHEREAS, on September 9, 2021, President Joseph Biden announced that staff who work in Head Start programs and in schools run by the Bureau of Indian Affairs and Department of Defense will be required to be vaccinated in order to implement the CDC's recommendations; and

WHEREAS, on August 26, 2021, New York State Department of Health adopted emergency regulations requiring staff of inpatient hospitals and nursing homes to receive the first dose of a vaccine by September 27, 2021, and staff of diagnostic and treatment centers, hospices, home care and adult care facilities to receive the first dose of a vaccine by October 7, 2021; and

WHEREAS, Section 17-104 of the Administrative Code of the City of New York directs the Department to adopt prompt and effective measures to prevent the communication of infectious diseases such as COVID-19, and in accordance with Section 17-109(b), the Department may adopt

vaccination measures to effectively prevent the spread of communicable diseases; and

WHEREAS, the City is committed to safe, in-person learning in all pre-school to grade 12 schools, following public health science; and

WHEREAS the New York City Department of Education ("DOE") serves approximately 1 million students across the City, including students in the communities that have been disproportionately affected by the COVID-19 pandemic and students who are too young to be eligible to be vaccinated; and

WHEREAS, a system of vaccination for individuals working in school settings, including DOE buildings and charter school buildings, will potentially save lives, protect public health, and promote public safety; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

WHEREAS, on August 24, 2021, I issued an order requiring COVID-19 vaccination for DOE employees, contractors, and others who work in-person in a DOE school setting or DOE building, which was amended on September 12, 2021; and

WHEREAS, unvaccinated visitors to public school settings could spread COVID-19 to students and such individuals are often present in public school settings and DOE buildings;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, to

RESCIND and RESTATE my September 12, 2021 Order relating to COVID-19 vaccination for DOE employees, contractors, visitors, and others; and

I hereby order that:

1. No later than September 27, 2021, or prior to beginning employment, the following individuals must provide proof of vaccination as described below:
    a. DOE staff must provide proof of vaccination to the DOE.
    b. City employees who work in-person in a DOE school setting, DOE building, or charter school setting must provide proof of vaccination to their employer.
    c. Staff of contractors of DOE or the City, as defined below, must provide proof of vaccination to their employer, or if self-employed, to the DOE.
    d. Staff of any charter school serving students up to grade 12, and staff of contractors hired by charter schools co-located in a DOE school setting to work in person in a DOE school setting or DOE building, must provide proof of vaccination to their employer, or if self-employed, to the contracting charter school.

2. An employer to whom staff must submit proof of vaccination status, must securely maintain a record of such submission, either electronically or on paper, and must demonstrate proof of compliance with this Order, including making such records immediately available to the Department upon request.

3. Beginning September 13, 2021, all visitors to a DOE school building must show prior to entering the building that they have:
    a. Been fully vaccinated; or
    b. Received a single dose vaccine, or the second dose of a two-dose vaccine, even if two weeks have not passed since they received the dose; or
    c. Received the first dose of a two-dose vaccine.

4. Public meetings and hearings held in a DOE school building must offer individuals the opportunity to participate remotely in accordance with Part E of Chapter 417 of the Laws of 2021.

5. For the purposes of this Order:

    "Charter school setting" means a building or portion of building where a charter school provides instruction to students in pre-kindergarten through grade 12 that is not collocated in a DOE building.

    "DOE school setting" includes any indoor location where instruction is provided to DOE students in public school pre-kindergarten through grade 12, including but not limited to locations in DOE buildings, and including residences of students receiving home instruction and places where care for children is provided through DOE's LYFE program. DOE school settings include buildings where DOE and charter schools are co-located.

    "DOE staff" means (i) full or part-time employees of the DOE, and (ii) DOE interns (including student teachers) and volunteers.

    "Fully vaccinated" means at least two weeks have passed after an individual received a single dose of a COVID-19 vaccine that only requires one dose, or the second dose of a two-dose series of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization.

    "Proof of vaccination" means proof that an individual:
    a. Has been fully vaccinated;
    b. Has received a single dose vaccine, or the second dose of a two-dose vaccine, even if two weeks have not passed since they received the dose; or
    c. Has received the first dose of a two-dose vaccine, in which case they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.

    "Staff of contractors of DOE or the City" means a full or part-time employee, intern or volunteer of a contractor of DOE or another City agency who works in-person in a DOE school

setting, a DOE building, or a charter school, and includes individuals working as independent contractors.

"Visitor" means an individual, not otherwise covered by Paragraph 1 of this Order, who will be present in a DOE school building, except that "visitor" does not include:

a. Students attending school or school-related activities in a DOE school setting;
b. Parents or guardians of students who are conducting student registration or for other purposes identified by DOE as essential to student education and unable to be completed remotely;
c. Individuals entering a DOE school building for the limited purpose to deliver or pick up items;
d. Individuals present in a DOE school building to make repairs at times when students are not present in the building;
e. Individuals responding to an emergency, including police, fire, emergency medical services personnel, and others who need to enter the building to respond to or pick up a student experiencing an emergency;
f. Individuals entering for the purpose of COVID-19 vaccination;
g. Individuals who are not eligible to receive a COVID-19 vaccine because of their age; or
h. Individuals entering for the purposes of voting or, pursuant to law, assisting or accompanying a voter or observing the election.

"Works in-person" means an individual spends any portion of their work time physically present in a DOE school setting, DOE building, or charter school setting. It does not include individuals who enter such locations for the limited purpose to deliver or pick up items unless the individual is otherwise subject to this Order. It also does not include individuals present such locations to make repairs at times when students are not present in the building unless the individual is otherwise subject to this Order.

6. Nothing in this Order shall be construed to prohibit any reasonable accommodations otherwise required by law.

7. This Order shall be effective immediately and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter or modify this Order pursuant to Section 3.01(d) of the Health Code.

Dated: September 15, 2021

Dave A. Chokshi, M.D., MSc
Commissioner

EXIBIT #2

ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
REQUIRING COVID-19 VACCINATION FOR
INDIVIDUALS WORKING IN CERTAIN CHILD CARE PROGRAMS

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

WHEREAS, on March 25, 2020, the Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the "Charter"), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (the "Department") extends; and

WHEREAS, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

WHEREAS, the U.S. Centers for Disease Control and Prevention ("CDC") reports that new variants of COVID-19, identified as "variants of concern" have emerged in the United States, and some of these new variants which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible than earlier variants; and

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, the CDC has recommended that school teachers and staff be "vaccinated as soon as possible" because vaccination is "the most critical strategy to help schools safely resume full operations [and] is the leading public health prevention strategy to end the COVID-19 pandemic;" and

WHEREAS, on September 9, 2021, President Joseph Biden announced that staff who work in Head Start programs and in schools run by the Bureau of Indian Affairs and Department of Defense will be required to be vaccinated in order to implement the CDC's recommendations; and

WHEREAS, on August 26, 2021, New York State Department of Health adopted emergency regulations requiring staff of inpatient hospitals and nursing homes to receive the first dose of a vaccine by September 27, 2021, and staff of diagnostic and treatment centers, hospices, home care and adult care facilities to receive the first dose of a vaccine by October 7, 2021; and

WHEREAS, Section 17-104 of the Administrative Code of the City of New York directs the Department to adopt prompt and effective measures to prevent the communication of infectious diseases such as COVID-19, and in accordance with Section 17-109(b), the Department may adopt vaccination measures to effectively prevent the spread of communicable diseases; and

WHEREAS, the City is committed to safe, in-person learning in all schools, following strong public health science; and

WHEREAS, the CDC notes that early childhood programs such as child care centers, school-based child care, and home-based child care, as well as afterschool programs and other child care programs, serve children under the age of 12 who are not eligible for vaccination at this time, making implementation of layered prevention strategies in such programs critical to protecting children; and

WHEREAS, child care programs serve hundreds of thousands of children and families across the City, including those in communities that have been disproportionately affected by the COVID-19 pandemic; and

WHEREAS, the City Department of Education ("DOE") and Department of Youth and Community Development ("DYCD") contract with community-based providers for early care and education programs, Universal Pre-Kindergarten, Early Learn, Head Start, family and group family day care, pre-school special education services, and afterschool, Beacon, and Cornerstone programs; and

WHEREAS, a system of vaccination for individuals working in child care centers, school-based child care, and home-based child care, as well as afterschool programs and other child care programs, will potentially save lives, protect public health, and promote public safety; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

WHEREAS, on August 24, 2021 I issued, and on September 11, 2021 I updated, an Order requiring COVID-19 vaccination for DOE employees, contractors, visitors, and others who work in-person at or visit a DOE school setting or DOE building;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and hereby order that:

1. No later than September 27, 2021, every covered child care program must exclude from the premises any staff person who has not provided proof of vaccination against COVID-19, as defined in this Order.

2. All staff persons newly hired on or after the effective date of this order by a covered child care program must provide proof of vaccination against COVID-19 to their employer on or before their start date.

3. Each covered child care program must securely maintain records of staff persons' proof of vaccination against COVID-19. Records may be kept electronically or on paper and must be made available to the Department immediately upon request. Records must include the following information:

   a. Each staff person's name and start date at the covered child care program.

   b. The type of proof of vaccination submitted; the date such proof was collected by the covered child care program; the brand of vaccine administered; and whether the person is fully vaccinated, as defined in this Order.

   c. For any staff person who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose must be provided, which must be no later than 45 days after the first dose.

4. For the purposes of this Order:

   "Covered child care program" means early childhood programs or services provided under contract with DOE for Birth-to-5 and Head Start services for infants, toddlers, and preschoolers including 3-k and pre-k services as well as early education programs serving young children with disabilities, Early Learn, pre-school special education pursuant to section 4410 of the Education Law, or by family home-based family child care providers contracted through family child care networks, or programs under contract with DYCD for after school, Beacon, and Cornerstone.

   "Fully vaccinated" means at least two weeks have passed after an individual received a single-dose of a vaccine that requires only one dose or the second dose in a two-dose series of a COVID-19 vaccine authorized or approved for use by the U.S. Food and Drug Administration or authorized for emergency use by the World Health Organization.

   "Premises" means locations where children are regularly present at covered child care programs.

   "Proof of vaccination against COVID-19" means one of the following documents demonstrating that an individual has either (a) been fully vaccinated against COVID-19; (b) received one dose of a single-dose COVID-19 vaccine; or (c) received the first dose of a two-dose COVID-19 vaccine, provided that a staff person providing proof of only such first dose provides proof of receiving the second dose of that vaccine within 45 days after receiving the first dose:

      i. A CDC COVID-19 Vaccination Record Card or other official immunization record from the jurisdiction, city, state, or country where the vaccine was administered that provides the person's name, vaccine brand, and date

administered. Such card or record may be shown in original paper copy or by digital or physical photo of such a card or record, including a photo shown on the New York City COVID Safe Pass; or

ii. A New York State Excelsior Pass populated as required with valid identification and vaccination proof.

"Staff person of a child care program" means an employee, contractor, volunteer or intern of the covered child care program who works in-person on the premises; a graduate, undergraduate or high school student placed by their educational institution at the covered child care program as part of an academic program and who works in-person on the premises; a specialist providing support services, therapy, special education or other services at the covered child care program to an individual child pursuant to a mandate for the child and who works in-person on the premises; or a person employed by a contractor of the covered child care program, including independent contractors, who works in-person on the premises. "Staff person" does not include a person who is onsite briefly for a limited purpose, such as to make a delivery or pick-up or perform a repair.

5. This Order shall be effective immediately and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter, or modify this Order pursuant to Section 3.01(d) of the Health Code.

Dated: September 12, 2021

Dave A. Chokshi, M.D., MSc
Commissioner

EXIBIT #28

Independent Budget Office of the City of New York

Providing city officials & the public with nonpartisan information on the
NYC budget & economy

Featured Resources

NEW YORK CITY BY THE NUMBERS

BUDGET OPTIONS FOR NEW YORK CITY

PUBLIC SCHOOL INDICATORS

NEW YORK CITY FISCAL HISTORY

BUDGET BASICS

Fiscal Brief

New York City Independent Budget Office **Fiscal Brief**

May 2020

How Much "CARE" for NYC?
An Estimate of Federal Coronavirus Emergency Relief Act Funding to the City Budget

PDF version available here.

The Independent Budget Office estimates that $5.3 billion in aid from the federal government's four coronavirus relief packages will flow to the city budget, largely in this fiscal year and next. These funds are in addition to federal aid granted to public agencies that provide essential city services but are outside the city budget, including $3.8 billion for the Metropolitan Transportation Authority (MTA), at least $818.6 million for NYC Health + Hospitals (H+H, the city's public hospital system), and $211.9 million for the city's public housing authority. These projections represent IBO's best estimates based on the data currently available. New data is being released on a near-daily basis, however, and details of

many of the local funding formulas have yet to be published. Costs reimbursed by the Federal Emergency Management Agency (FEMA) are not included in these estimates.

The majority of the $5.3 billion in aid that IBO projects the city will receive must be used to cover direct costs incurred by the city due to the Covid-19 pandemic or to fund programs that provide aid to city residents impacted by the resulting downturn, such as increased funding for existing food and rental assistance programs. The more than $700 million in federal education aid included in this total will replace state school aid cut by the Governor in the state's recently enacted budget. Therefore, while this funding represents a considerable sum to help pay for the city's Covid-19 response, it does little to address the $9.5 billion shortfall in city tax revenue that IBO expects to result from the economic downturn caused by the pandemic over the 2020 and 2021 fiscal years.

IBO Estimates of Federal Relief Aid Funding to New York City Budget
Dollars in thousands

Program Area	City Agency	Total City Funding
Coronavirus Relief Fund	Various	$1,454,710
Public Health		
Enhanced Federal Medicaid Assistance Program (eFMAP)	Health	$1,000,000
Public Health and Services Emergency Fund: Testing	Health	845,000
Centers for Disease Control Preparedness Grants (Coronavirus Preparedness Act)	Health	25,100
Centers for Disease Control Preparedness Grants (CARES Act)	Health	18,800
Public Health and Social Services Emergency Fund: Hospital Preparedness	Health	11,700
Suicide Prevention	Health	2,400
Reauthorization of Healthy Start Program	Health	1,200
Public Health and Emergency Social Services Emergency Fund: Hospital Preparedness	Health	1,100
Ryan White HIV/AIDS Program	Health	1,000
Poison Control Centers	Health	131
Subtotal Public Health Programs		**$1,906,431**
Community Development and Housing		
Community Development Block Grant	Various	$472,689
Emergency Solutions Grant	Homeless Services and Housing	473,594
Housing Choice Vouchers	Housing	25,891
Subtotal Community Development and Housing		**$972,173**
Education and Child Care		
Education Stabilization Fund: Elementary and Secondary School Emergency Relief Fund & Governor's Emergency Education Relief Fund	Education	$716,903
Education Stabilization Fund: Higher Education Emergency Relief Fund	CUNY Community Colleges	79,000
Child Care and Development Block Grant	Children's Services & Education	88,300
Child Nutrition Programs	Education	33,034
Head Start	Education	9,719
Subtotal Education and Childcare Programs		**$926,956**
Social Services and Criminal Justice Programs		
Community Services Block Grant	Various	$32,000
Senior Meals	Aging	18,300
Low Income Housing Energy Assistance Program	Social Services	7,377
Housing Opportunities for Persons with AIDS	Social Services	6,351
Child Welfare Funding	Children's Services	1,020
Local Law Enforcement	Various	12,800
Election Security Grants	Board of Elections	6,000
Subtotal Social Services and Criminal Justice Programs		**$83,848**
Total		**$5,344,119**

SOURCE: IBO analysis of the Federal Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020; the Families First Coronavirus Response Act, 2020; Paycheck Protection Program and Health Care Enhancement Act, 2020; and the Coronavirus Aid, Relief and Economic Security Act, 2020
NOTES: These figures represent IBO's best projections based on available data and IBO's estimates of local funding allocations, as the details of many of the legislations' funding formulas have yet to be released. IBO did not include costs reimbursed by the Federal Emergency Management Agency in this estimate. IBO did not calculate or include estimates of local awards of federal competitive grants as the likeliness of awards and amount of such funding is unknown.
New York City Independent Budget Office

Federal Relief Bills. The federal government has enacted

Federal Relief Bills. The federal government has enacted four emergency relief bills thus far to address the impact of the Covid-19 pandemic. The first package, the Coronavirus Preparedness and Response Supplemental Appropriations Act, was signed into law March 6, 2020 and authorized $8.3 billion in emergency spending, largely for public health programs.

The Families First Coronavirus Response Act followed on March 18, 2020 with provisions for paid sick leave, food programs, a mandate that Covid-19 tests be administered at no cost to individuals, and expanded unemployment benefits and coverage.

On March 27, 2020, President Trump signed the third bill, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which provides more than $2 trillion dollars in direct support to households, businesses, states, some local governments, and the health care industry. The majority of the funds flowing to the city budget come from the CARES Act.

A fourth bill, the Paycheck Protection Program and Health Enhancement Act, was signed on April 24, 2020. It largely increased the funding made available to small businesses and health care institutions in the CARES Act.

Coronavirus Relief Fund. Just over a quarter of the $5.3 billion in aid that IBO estimates the city will receive comes from the $150 billion Coronavirus Relief Fund included in the CARES Act. IBO estimates that the city will receive nearly $1.5 billion in direct aid from this fund. While the majority of the Coronavirus Relief Fund flows directly to state governments, local governments with populations of 500,000 or more can elect to receive a portion of their state's funds directly. New York State received an allocation of $7.5 billion, including the $1.5 billion that will flow directly to the city.

The CARES Act requires the city to use these funds to pay for "necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019." In order to be eligible for reimbursement, the spending must not have been included in the city's budget before the CARES

Act was enacted and must occur from March 1, 2020 through Dec. 30, 2020.

Public Health. IBO estimates that public health provisions included in the four federal emergency aid bills will net city programs $1.9 billion in funding for expenses incurred to fight the pandemic, with millions more flowing to the city's public hospital system (see sidebar, page 4). Of these provisions, the largest impact on the city budget comes from changes to Medicaid funding. The Families First Coronavirus Act increased the share of Medicaid paid by the federal government by 6.2 percentage points (called the enhanced Federal Medical Assistance Percentage, or eFMAP.) In New York the federal, state, and city governments share Medicaid costs, so if the state allows the savings from the eFMAP to flow through to localities across the state—as it has done in the past—there would be savings for the city. We expect the city will save $1.0 billion in Medicaid payments due to eFMAP —funds it can redirect for other uses.

The most recent aid package provided up to $11.0 billion for states and local governments to expand testing for Covid-19. While the formula for local awards has yet to be released, based on language in the legislation, IBO estimates that the New York City's health department will receive about $845.0 million of this funding.

The city's health department will also receive funds through the Center for Disease Control (CDC) Preparedness Program. The CDC has already allocated $25.1 million authorized by the Coronavirus Preparedness Act to the city and $18.8 million through the CARES Act, with the possibility of more. These funds can be used for monitoring the spread of the coronavirus, laboratory testing, contact tracing, the purchase of personal protective equipment, and related public health activities.

IBO estimates that another $17.5 million in CARES Act funding will be available to the city for a variety of programs, including hospital preparedness, the city's Ryan White HIV/AIDS program, suicide prevention, and poison control.

Community Development and Housing. IBO projects that

aid from federal community development and housing programs will total about $972.2 million. Included in this funding is $472.7 million in new Community Development Block Grant (CDBG) awards. Authorized by the CARES Act, the additional CDBG funding is relatively flexible. Eligible uses include construction of public facilities (such as clinics and expanded hospital capacity), economic development programs to create or preserve jobs, training programs to increase the number of health care workers, and meal delivery to quarantined individuals. The Department of Housing and Urban Development (HUD) has already allocated $102.1 million in emergency CDBG funds to the city based on its annual CDBG formula grant. Additional funds will be awarded based on a formula that takes into account the impact of Covid-19 on specific localities. IBO estimates these additional CDBG funds could total $370.6 million for New York City.

In addition to the CDBG funds, IBO estimates the city will receive $473.6 million for homeless and housing programs through an increase to HUD's Emergency Solutions Grant included in the CARES Act. These funds can be used to build and operate emergency homeless shelters, create new rental assistance programs, and provide services to homeless populations. Like the CDBG funds, a portion has already been allocated to the city based on its annual formula grant and additional funds are expected.

The CARES Act also provides increases to existing federal rental-assistance programs, including the Housing Choice Voucher program (or Section 8). Tenants in this program generally pay 30 percent of their income in rent to private property owners and the federal subsidy pays the balance. As tenants' incomes decline during the economic downturn, additional subsidy is needed to make up the difference. IBO estimates the city could receive $25.9 million for this program, funds that would eventually flow to landlords. (The majority of the city Housing Choice Program is administered by the New York City Housing Authority, or NYCHA, which also will receive funding. See sidebar).

At Least $4.9 Billion Expected for Public Agencies Not Part of the City's Budget

In addition to the funds flowing through the city budget, numerous other public entities and agencies operating in New York City are expected to receive funds through the federal government's various relief bills. IBO has estimated the affect of the federal emergency assistance bills on several of the larger non-city agencies.

IBO Estimates of Federal Relief Aid Funding to Related Agencies Outside the City Budget
Dollars in thousands

Agency	Funding
Metropolitan Transportation Authority	
Transit Infrastructure Grants	$3,790,513
Subtotal Metropolitan Transportation Authority	**$3,790,513**
NYC Health + Hospitals	
Public Health and Social Services Emergency Fund-Reimbursement to Hospitals & Health Care Providers	At least $449,000
Delay in Cuts to Medicaid DSH Program	327,450
Temporary Suspension of Medicare Sequester	22,500
Medicare DRG Add-On Payment For COVID-19 Patients	At Least 13,900
Community Health Care Centers	4,400
Covid-19 Telehealth Program	1,000
Ryan White HIV/AIDS Program	353
Subtotal NYC Health + Hospitals	**At least $818,603**
New York City Public Housing	
Public Housing Operating Fund	$149,860
Section 8 Tenant Based Vouchers	62,000
Subtotal New York Public Housing	**$211,860**
CUNY-Senior, Graduate, Honors, And Professional Colleges	
Education Stabilization Fund: Higher Education Emergency Relief Fund	$158,000
Subtotal CUNY-Senior, Graduate, Honors, and Professional Colleges	**$158,000**
Total Related Agencies	**$4,978,976**

SOURCE: IBO analysis of the Federal Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020; the Families First Coronavirus Response Act, 2020; Paycheck Protection Program and Health Care Enhancement Act, 2020; and the Coronavirus Aid, Relief and Economic Security Act, 2020
NOTES: These figures represent IBO's best projections based on available data and IBO's estimates of local funding allocations, as the details of many of the legislations' funding formulas have yet to be released. IBO did not include costs reimbursed by the Federal Emergency Management Agency in this estimate. Figures for NYC Health+Hospitals reprsent IBO estimates based on the low-end of possible federal funding. For additional details, please see text.

New York City Independent Budget Office

New York City Independent Budget Office

Metropolitan Transportation Authority. The MTA has been awarded $3.8 billion in federal aid authorized by the CARES Act. This funding is intended to help bolster MTA revenues, which have plummeted in response to decreases in ridership during the coronavirus public health crisis. The funds can also be used to purchase personal protective equipment, and to pay the salaries of staff who are furloughed due to reductions in service or quarantine measures.

NYC Health + Hospitals. IBO estimates that New York City's Health + Hospitals will receive at least $818.6 million through a variety of provisions in the federal relief bills. This estimate represents the low-end of potential awards, as funding allocations for many provisions remain unknown.

A little over 40 percent of the funds IBO estimates H+H will receive come from delaying federal funding cuts to the Medicaid and Medicare programs, both previously set for May but now postponed until December 2020. This includes delaying the cuts to the Medicaid Disproportionate Share Program and a temporary suspension of the Medicare reductions mandated under federal budget sequestration legislation, which first went into effect in 2013. IBO expects these delays will increase H+H funding over this fiscal year and next by $327.5 million and $22.5 million, respectively. Another $4.4 million from the CARES Act has already been disbursed to H+H through funding for community health centers. IBO also expects H+H to receive $1.0 million for telehealth services through the CARES Act.

Two provisions in the CARES Act could result in millions more for H+H, but because there is a great deal of uncertainty over how the funds will be distributed, IBO has chosen to estimate conservatively. The first provision involves a $175.0 billion Public Health and Social Services Emergency Fund to reimburse health care providers affected by Covid-19; the CARES Act authorized $100.0 billion for the reimbursement fund and the Paycheck Protection Program and Health Enhancement Act increased it by another $75.0 billion.

The language in the CARES Act provided few details on how to allocate these funds, but the Department of Health and Human Services has since announced guidance on awarding the first $72.4 billion. This includes a $50 billion "general allocation," $10 billion allocation for "high-impact areas," a $2.0 billion allocation for treatment of the uninsured, $10.0 billion for rural health centers and $400.0 million for Indian Health Services.

IBO estimates that H+H will receive at least $449.0 million from the general and high-impact area allocations. Medicare providers effected by Covid-19 are awarded funds from the general allocation based on their net patient revenue in 2018. We expect this will result in $60 million for H+H. The high-impact area allocation is distributed based on the number of intensive care beds and Covid-19 patient admissions. IBO estimates H+H will receive $389.0 million from this allocation. H+H will also likely receive funds for treatment of the uninsured, however, it is unclear how much. (H+H is ineligible for the rural and Indian Health allocations). There is little information on how the remaining $102.6 billion authorized will be allocated.

The second major provision in the CARES Act affecting H+H is a 20 percent increase in the weighting factor of the assigned Medicare Diagnosis-Related Group (DRG) for patients with Covid-19. The DRG determines how much the federal government pays for Medicare fee-for-service-eligible patients. How much federal funding this brings to H+H depends on how many New Yorkers are infected during the public health emergency, and of those, the share that are hospitalized, Medicare fee-for-service eligible, and treated in the city's public hospitals.

If 20 percent of city residents are infected, and of those 15 percent are hospitalized, and 15 percent of those hospitalized require intensive care, IBO estimates the effect of the increase to the DRG payment for H+H, based on H+H's current share of the city's Medicare-eligible patients, will be $13.9 million. If the infected share of the population were 60 percent (again with 15 percent hospitalized and 15 percent of the hospitalized patients requiring intensive care) then the increase in DRG rates would result in $41.6 million of

additional H+H revenue

Other provisions of aid bills are likely to provide additional funding for H+H, but are difficult to estimate, including free coronavirus testing for the uninsured through Medicaid, and funding for H+H's community health centers and for health centers that provide graduate medical education. H+H is also eligible to receive FEMA reimbursements for emergency costs. These are not included in this estimate.

New York City Housing Authority. IBO estimates the New York City Housing Authority will receive $211.9 million through two provisions of the CARES Act. The first provides additional operating support to public housing agencies to compensate for decreases in rental payments resulting from reductions in tenants' incomes. (NYCHA residents pay a fixed share of their income in rent, so when tenants' incomes decline, the rents NYCHA collects decline as well.) HUD has announced the authority will receive $149.9 million through this provision. NYCHA also administers most of the city's Housing Choice Vouchers (Section 8) and it expects to receive around $62.0 million under the CARES Act to help cover increased subsidy costs resulting from reductions in tenants' income.

CUNY. IBO estimates CUNY's senior colleges, graduate institutions, and professional schools will receive $158.0 million from the Higher Education Emergency Relief Fund established as part of the Education Stabilization Fund in the CARES Act. This is in addition to the $79.0 million for CUNY community colleges that IBO expects to flow through the city budget.

Education and Child Care. IBO identified about $927.0 million in aid for city education and child care programs authorized in the CARES Act.

The largest source of education funding is a nearly $30.8 billion national Education Stabilization Fund, which includes three components: the Governor's Emergency Education Relief Fund, the Elementary and Secondary School Emergency Relief Fund, and the Higher Education Emergency

Relief Fund.

Both of the relief funds are allocated to states based on formulas outlined in legislation; states, in turn, pass funding along to localities. According to the U.S. Department of Education, New York State's allocation totals $164.3 million for the Governor's fund and just over $1.037 billion for the Elementary and Secondary School Fund.

Shortly after the CARES Act was signed, New York State enacted its fiscal year 2021 budget. Nearly all of the state's allocation of both the Governor's Relief Fund and the Elementary and Secondary School Fund were budgeted to offset a "Pandemic Adjustment" reduction in school aid statewide. New York City is slated to receive $716.9 million in school aid from the CARES Act, just equal to the $716.9 million Pandemic Adjustment reduction included in the state's budget for fiscal year 2021.

Awards from the Higher Education Emergency Relief Fund are distributed directly to colleges and universities using a formula based on the shares of full-time students who are Pell Grant recipients. According to the U.S. Department of Education, the city university's (CUNY) community colleges will receive $79.0 million, a third of the $237.0 million allocated to all CUNY schools (CUNY senior colleges, graduate institutions, and professional schools are not included in the city's budget. See side bar above)

The CARES Act also provides supplemental funding for the city's Child Nutrition Programs, which include the National School Lunch Program, the School Breakfast Program, and the Child and Adult Care Food Program. This funding is intended to provide grants to districts for planning and coordination of food service during the pandemic. With schools now scheduled to remain closed through the rest of the school year, IBO projects that the city's Department of Education could receive about $33.0 million in reimbursements under the program. An additional $9.7 million will go the city's Head Start program under the CARES Act.

The CARES Act increases the city's Child Care and

Development Block Grant by $88.3 million; $22.7 million of the aid will flow to the Department of Education and $65.6 million to the Administration for Children's Services, according to IBO estimates.

IBO Social Services and Criminal Justice Programs. IBO projects that federal coronavirus relief aid for a variety of city social service and criminal justice programs will total $83.8 million. The largest share of these funds ($32.0 million) is expected through a CARES Act increase to the Community Services Block Grant, which funds a variety of programs largely through the city's Department of Youth and Community Development.

IBO estimates that city programs providing meals to seniors impacted by Covid-19 will receive a total of $18.3 million through funding included in both the Families First Coronavirus Response Act and the CARES Act. (The CARES Act also increased funds available for the Supplemental Nutrition Assistance Program, also known as food stamps. These funds are paid directly to recipients, so they do not flow through the city budget. Based on the assumption that city residents will benefit from the same share of the increase as they received under the national program last year, IBO expects that New Yorkers could receive $620 million.)

Other social services programs expected to receive increased aid under the CARES Act include: the Low Income Housing Energy Assistance Program ($7.4 million); services for populations living with HIV/AIDS through the Housing Opportunities for Persons with AIDS program ($6.3 million); and about $1.0 million in increased child welfare funding.

Lastly, IBO estimates the city could receive an approximately $12.8 million increase in Justice Assistance Grant funding through the CARES Act to help cover costs incurred by the police department, Department of Correction, and the Mayor's Office of Criminal Justice, as well as $6.0 million in Election Security Grant funding to help cover coronavirus-related costs during the 2020 election cycle.

Report prepared by Elizabeth Brown with IBO Staff

Report prepared by Elizabeth Brown with IBO Staff

PDF version available here.

- Receive notification of free reports by e-mail
- Facebook
- Twitter
- RSS
-
-
-
-
-

IBO on Facebook

IBO RSS

IBO on Twitter

Publications
About IBO Translate
Stay Connected

EXIBIT #4

ORDER OF THE COMMISSIONER OF HEALTH AND MENTAL HYGIENE REVISING THE EFFECTIVE DATE FOR REQUIRED COVID-19 VACCINATION OF DEPARTMENT OF EDUCATION EMPLOYEES, CONTRACTORS, VISITORS AND OTHERS

WHEREAS, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

WHEREAS, on September 15, 2021, I issued, and on September 17, 2021, the Board of Health ratified, an Order requiring proof of COVID-19 vaccination for New York City Department of Education ("DOE") employees, contractors, visitors, and others; and

WHEREAS, under such Order, DOE staff, charter school staff, and individuals who work in-person in a DOE school setting or DOE building were required to provide proof of vaccination no later than September 27, 2021; and

WHEREAS, on September 24, 2021, the United States Court of Appeals for the Second Circuit entered a temporary injunction of said Order, and then on September 27, 2021, the same Court dissolved such injunction;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, to

AMEND my September 15, 2021 Order requiring COVID-19 vaccination for DOE employees, contractors, visitors and others, as ratified by the Board of Health on September 17, 2021, to:

1. Require that any proof of vaccination previously required to be provided by September 27, 2021, or before beginning employment, now be provided no later than Friday, October 1, 2021, or before beginning employment; and

2. Require that beginning Monday, October 4, 2021, any visitor to a DOE school building show proof of receipt of at least one dose of a COVID-19 vaccine, as described in such Order.

Dated: September 28, 2021

Dave A. Chokshi, M.D., MSc
Commissioner

EXIBIT #19

Hospital Respiratory Protection Program Toolkit

Resources for Respirator Program Administrators

MAY 2015

U.S. Department of Labor

OSHA Occupational Safety and Health Administration

CDC Workplace Safety and Health

NIOSH National Institute for Occupational Safety and Health

This document was adapted from a California-specific guide, *Implementing Respiratory Protection Programs in Hospitals: A Guide for Respirator Program Administrators*, May 2012, which was developed by the California Department of Public Health, Occupational Health Branch, and the Public Health Institute under contract no. 254-2010-345-11 from the National Institute for Occupational Safety and Health, National Personal Protective Technology Laboratory (NIOSH-NPPTL). The guide was adapted under contract no. 254-2011-M-40839 from NIOSH-NPPTL to produce this toolkit.

Special thanks to the following organizations for assistance in the development and/or review of these materials:

3M, Inc.

America Federation of Labor-Congress of Industrial Organizations (AFL-CIO)

American Federation of State, County, and Municipal Employees (AFSCME)

Arizona Division of Occupational Safety and Health

Children's Healthcare of Atlanta, Inc.

Coalition of Kaiser Permanente Unions

Hospital Corporation of America

Illinois State University, Department of Health Sciences

Intermountain Healthcare

Kaiser Permanente

Mayo Clinic

Michigan Public Institute, Center for Healthy Communities

New York State Department of Health

Service Employees International Union (SEIU)

University of Minnesota, School of Public Health

University of North Carolina, Chapel Hill

Veterans Health Administration, Iowa City VA Health Care System

Veterans Health Administration, Office of Public Health

Y. Day Designs

This guidance document is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. The *Occupational Safety and Health Act* requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the Act's General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.

Hospital Respiratory Protection Program Toolkit

Resources for Respirator Program Administrators

May 2015

Table of Contents

Glossary

Aerosol-generating procedures—Procedures that may increase potential exposure to aerosol transmissible disease pathogens due to the reasonably anticipated aerosolization of pathogens. Aerosol-generating procedures may also be known as high hazard or cough-inducing procedures. See page 12 for a detailed explanation.

Aerosol transmissible disease (ATD) or aerosol transmissible disease pathogen—Any disease or pathogen requiring Airborne Precautions and/or Droplet Precautions.

Airborne infection isolation room (AIIR)—A single-occupancy patient-care room designed to isolate persons with suspected or confirmed airborne infectious diseases. Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that can be spread from person-to-person by the airborne route. AIIRs should maintain negative pressure relative to adjacent rooms and halls (so that air flows under the door gap into the room), an air flow rate of 6–12 air changes per hour, and direct exhaust of air from the room to the outside of the building or recirculation of air through a HEPA filter.

Airborne Precautions—A category of Transmission-Based Precautions that CDC and HICPAC may recommend when Standard Precautions alone are not sufficient to prevent the transmission of disease. When Airborne Precautions are required patients should be placed in airborne infection isolation rooms and healthcare personnel sharing patients' airspaces should wear respirators.

Air-purifying respirator (APR)—A respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through an air-purifying element. See page 15 for a detailed explanation.

Assigned protection factor (APF)—The workplace level of respiratory protection that a respirator or class of respirators is expected to provide to employees when the employer implements a continuing, effective respiratory protection program as specified in 29 CFR 1910.134.

Droplet Precautions—A category of Transmission-Based Precautions that CDC and HICPAC may recommend when Standard Precautions alone are not sufficient to prevent the transmission of disease. When Droplet Precautions are required, patients should be spatially separated, preferably in separate rooms with closed doors. Healthcare personnel should wear surgical masks for close contact and, if substantial spraying of body fluids is anticipated, gloves and gown as well as goggles (or face shield in place of goggles). Patients should be masked during transport.

Facemask—A loose-fitting, disposable device that creates a physical barrier between the mouth and nose of the wearer and potential contaminants in the immediate environment. Facemasks may be labeled as surgical, laser, isolation, dental, or medical procedure masks and are cleared by the FDA for marketing. They may come with or without a face shield. Facemasks do not seal tightly to the wearer's face, do not provide the wearer with a reliable level of protection from inhaling smaller airborne particles, and are not considered respiratory protection.

Facepiece—The part of a respirator that covers the nose and mouth of the wearer. Respirators may have half facepieces covering just the nose and mouth, or they may have full facepieces covering the nose, mouth, and eyes. They are designed to form a seal with the face.

Filtering facepiece respirator—A type of disposable (single-use), negative-pressure, air-purifying respirator where an integral part of the facepiece or the entire facepiece is made of filtering material.

Fit factor—A quantitative estimate of the fit of a particular respirator to a specific individual; typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

Fit test—The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

Food and Drug Administration (FDA)—An agency within the U.S. Department of Health and Human Services. The FDA is responsible for, among other things, protecting the public health by assuring drugs, vaccines, and other biological products and medical devices intended for human use are safe and effective.

Healthcare Infection Control Practices Advisory Committee (HICPAC)—A federal advisory committee assembled to provide advice and guidance to the CDC and the U.S. Department of Health and Human Services regarding the practice of infection control and strategies for surveillance, prevention, and control of healthcare-associated infections and antimicrobial resistance in United States healthcare settings. CDC and HICPAC authored the *2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings*, which describes Standard and Transmission-Based Precautions used for infection control.

Healthcare personnel (HCP)—Paid and unpaid persons who provide patient care in a healthcare setting or support the delivery of healthcare by providing clerical, dietary, housekeeping, engineering, security, or maintenance services.

High-efficiency (HE) or high-efficiency particulate air (HEPA) filter—The NIOSH classification for a filter that is at least 99.97% efficient in removing particles and is used in powered air-purifying respirators (PAPRs). When high-efficiency filters are required for non-powered respirators, N100, R100, or P100 filters may be used.

Hood—The portion of a respirator that completely covers the head and neck, and may also cover portions of the shoulders and torso, and through which clean air is distributed to the breathing zone.

Loose-fitting facepiece—The portion of a respirator that forms a partial seal with the face but leaves the back of the neck exposed, is designed to form a partial seal with the face, and through which clean air is distributed to the breathing zone.

N95 filter—A type of NIOSH-approved filter or filter material, which captures at least 95% of airborne particles and is not resistant to oil.

N95 respirator—A generally used term for a half mask air-purifying respirator with NIOSH-approved N95 particulate filters or filter material (i.e., includes N95 filtering facepiece respirator or equivalent protection).

Negative-pressure respirator—A tight-fitting respirator in which air is inhaled through an air-purifying filter, cartridge, or canister during inhalational efforts, generating negative pressure inside the facepiece relative to ambient air pressure outside the respirator.

Personal protective equipment (PPE)—Specialized clothing or equipment worn by an employee to protect the respiratory tract, mucous membranes, skin, and clothing from infectious agents or other hazards. Examples of PPE include gloves, respirators, goggles, facemasks, surgical masks, faceshields, footwear, and gowns.

Physician or other licensed healthcare professional (PLHCP)—An individual whose legally permitted scope of practice (i.e., license, registration, or certification), as defined by the state where he or she practices, allows him or her to independently provide, or be delegated the responsibility to provide, some or all of the healthcare services required to provide a medical evaluation as described in OSHA's Respiratory Protection standard.

Powered air-purifying respirator (PAPR)—An air-purifying respirator that uses a blower to force air through filters or cartridges and into the breathing zone of the wearer. This creates a positive pressure inside the facepiece or hood, providing more protection than a non-powered or negative-pressure half mask APR.

Qualitative fit testing (QLFT)—A pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

Quantitative fit testing (QNFT)—An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

Respirator—A device worn over the nose and mouth to protect the wearer from hazardous materials in the breathing zone. Respirators must be certified by NIOSH for the purpose for which they are used.

Respirator program administrator (RPA)—Individual designated to oversee a facility's respiratory protection program (RPP).

Respiratory protection program (RPP)—Program required by OSHA under the Respiratory Protection standard that includes development and implementation of detailed policies and worksite-specific procedures for respirator use for control of respiratory hazards.

Surgical mask—A loose-fitting, disposable type of facemask that creates a physical barrier between the mouth and nose of the wearer and potential contaminants in the immediate environment. Surgical masks are fluid resistant and provide protection from splashes, sprays, and splatter. Surgical masks do not seal tightly to the wearer's face, do not provide the wearer with a reliable level of protection from inhaling smaller airborne particles, and are not considered respiratory protection.

Surgical respirator—A filtering facepiece respirator with spray- or splash-resistant facemask material on the outside to protect the wearer from splashes. Also known as a surgical N95 respirator.

User seal check—An action conducted by the respirator user to determine if the respirator is properly seated to the face. For all tight-fitting respirators, the employer shall ensure that employees perform a user seal check each time they put on the respirator using the procedures in Appendix B-1 of OSHA's Respiratory Protection standard or equally effective procedures recommended by the respirator manufacturer. User seal checks are not substitutes for qualitative or quantitative fit tests.

Why Hospitals Need a Respiratory Protection Program

Respiratory Hazards in the Healthcare Setting

The hospital environment contains hazards such as bacteria, viruses, and chemicals that may be inhaled by personnel and cause injury or illness. The approach for reducing exposure required by the Occupational Safety and Health Administration (OSHA) and accepted by health and safety professionals is to use a "hierarchy of controls." This means we start with the most effective controls—the elimination of hazards or substitution of less hazardous processes, chemicals, or products. Next in the hierarchy are engineering controls, which involve isolating the hazard and/or using specialized ventilation (e.g., isolation rooms or laboratory hoods). Where these controls are not feasible or adequate, administrative controls (e.g., providing vaccinations or triaging chemical emergency patients) and work practices (e.g., following respiratory hygiene/cough etiquette strategies or keeping chemical containers capped) are used to reduce risk, most often by minimizing the extent or duration of the exposure, or reducing the number of employees exposed. Respirators and other personal protective equipment (PPE) are used as a last line of defense when exposures cannot be reduced to an acceptable level using these other methods. Each facility should develop policies and procedures which address the control methods used at their institution.

The hazards associated with ATDs (e.g., infectious patients with a transmissible disease or, in rare situations, environmental sources of anthrax or fungi) cannot be eliminated from or substituted out of the hospital setting. ATD pathogen exposures cannot routinely be measured in the air, and have no established occupational exposure limits. In addition, ATD pathogens vary in infectivity and severity of outcome. In order to protect employees from ATDs, healthcare facilities must implement comprehensive infection control plans utilizing a combination of engineering, administrative (including training and vaccination), and work practice controls, and provide for the use of respirators and other PPE.

Healthcare personnel who care for patients with ATDs must work in close proximity to the source of the hazard; even with controls in place, they are likely to have a higher risk of inhaling infectious aerosols (droplets and particles) than the general public. These personnel, and others with a higher risk of exposure related to the tasks they perform (e.g., lab or autopsy workers), must often be protected further through the proper use of

Photo: Centers for Disease Control and Prevention

Airborne droplets visible during sneezing (photo enhanced).

FIGURE 1: EXAMPLES OF METHODS FOR CONTROLLING EXPOSURE TO AEROSOL TRANSMISSIBLE DISEASE PATHOGENS

Minimize the number of employees exposed	Minimize the amount of infectious aerosol in the air	Protect employees who must be exposed
• Isolate patients suspected or confirmed with tuberculosis in negative pressure rooms, to separate the source from all employees not providing direct patient care. • Use partitions, barriers, or ventilated enclosures to separate employees from the source of the hazard.	• Place a surgical mask on patients with a suspected or confirmed ATD. • Use closed suctioning systems to minimize the dispersion of aerosol.	• Provide vaccinations. • Use personal protective equipment (PPE) including respirators when caring for patients with measles (rubeola).

respirators. See Figure 1 above for some examples of methods used for controlling exposures to ATD pathogens in the healthcare setting.

Respiratory Protection Reduces Inhalation of Aerosols

In order to understand how respirators can be used to protect healthcare personnel, it is important to understand what a respirator is and what it is not. One important distinction that must be made when discussing respirator use in healthcare settings is the difference between **respirators** and **facemasks**. Facemasks include surgical masks, which are fluid resistant, and procedure or isolation masks which are not fluid resistant. While some people may call both respirators and facemasks "masks," this is incorrect as they are very different in their design, performance and purpose.

The purpose of a facemask, **when worn by healthcare personnel,** is twofold. As part of "Droplet Precautions" (explained in more detail later in this document), the surgical mask is worn to protect the wearer from large droplets or sprays of infectious body fluids from patients that otherwise could be directly transmitted to the mucous membranes in the wearer's nose or mouth. In other instances, a facemask is worn by healthcare personnel to protect patients by reducing the amount of large droplets with infectious agents the wearer could introduce into the room by talking, sneezing, or coughing; this protection is especially important where sterile fields must be maintained, such as operating rooms.

The purpose of a facemask, **when worn by a patient** suspected or confirmed with an illness such as influenza or tuberculosis, is to reduce the amount of large infectious particles released as

the patient talks, sneezes, or coughs; this limits their concentration in the room air and reduces the infection risk to others who are present.

However, facemasks by design do not seal tightly to the wearer's face. Therefore, they allow unfiltered air to easily flow around the sides of the facemask into the breathing zone and respiratory tract of the wearer. In addition, the materials used for facemasks are not regulated for their ability to filter particles and are known to vary greatly between models. This makes it possible for small particles to pass through or around the facemask and be inhaled by the wearer. **This is why they are not considered respiratory protection—facemasks do NOT provide the wearer with a reliable level of protection from inhaling smaller particles, including those emitted into the room air by a patient who is exhaling or coughing, or generated during certain medical procedures**.

The purpose of a respirator **when worn by healthcare personnel,** for example a N95 filtering facepiece respirator, is typically to protect the wearer by reducing the concentration of infectious particles in the air inhaled by the wearer. These particles may come from infectious patients who are exhaling, talking, sneezing, or coughing in the rooms in which healthcare personnel are working; from medical procedures performed on infectious patients (e.g., using bone saws or performing bronchoscopies); or from laboratory procedures (e.g., operating centrifuges, blenders, or aspiration equipment) that may aerosolize pathogens.

Respirators are designed and regulated to provide a known level of protection when used within the context of a comprehensive and effective respiratory protection program (see the "Types of Respiratory Protection" section on page 15). For example, filtering facepiece respirators are designed to seal tightly to the face when the proper model and size is selected for the individual by using a fit test procedure. The wearer can then be assured that inhaled air is forced through the filtering material, which allows contaminants to be captured and reduces exposure to both large droplets and small infectious particles.

Photo: California Dept. of Public Health

Healthcare personnel wearing a surgical mask.

Photo: California Dept. of Public Health

Healthcare personnel wearing a filtering facepiece respirator.

Also available, and widely used in healthcare, is the **surgical respirator**—a filtering facepiece respirator with spray- or splash-resistant facemask material on the outside to protect the wearer from splashes (sometimes referred to as "surgical N95 respirators"). See Figure 2 below for further comparison of surgical masks, filtering facepiece respirators, and surgical respirators.

FIGURE 2: SURGICAL MASKS, FILTERING FACEPIECE RESPIRATORS, AND SURGICAL RESPIRATORS

	Surgical Masks	Filtering Facepiece Respirators	Surgical Respirators
Intended use when: Worn by HCP[1]	Do not protect against small airborne particles (aerosols) Protect the patient and sterile field by reducing the number of particles introduced into the room as HCP talk, sneeze, or cough Protect the wearer's nose/mouth from splashes or sprays of large droplets of body fluids	Reduce HCP inhalation of both large droplets and small airborne particles (aerosols) Protect the patient by reducing the number of particles introduced into the room as HCP talk, sneeze, or cough	Reduce HCP inhalation of both large droplets and small airborne particles (aerosols) Protect the patient and sterile field by reducing the number of particles introduced into the room as HCP talk, sneeze, or cough Protect the wearer's nose/mouth from splashes or sprays of large droplets of body fluids
Worn by patient	Protect HCP by reducing the number of particles introduced into the room as a patient talks, sneezes, or coughs	Not typically worn by patients	Not typically worn by patients
Fit testing required?	No, not designed to seal to the face	Yes, to ensure adequate seal to the face	Yes, to ensure adequate seal to the face
Government oversight	FDA[2] clears for marketing	NIOSH[3] provides certification	NIOSH provides certification and FDA clears for marketing

[1] HCP = healthcare personnel
[2] FDA = United States Food and Drug Administration
[3] NIOSH = National Institute for Occupational Safety and Health

patients suspected or known to have diseases requiring Droplet Precautions, CDC and HICPAC report that infection has occurred at distances greater than 3 feet. Thus, CDC and HICPAC state that observing Droplet Precautions at a distance up to 6 or 10 feet or upon entry into the patient's room may be prudent.

When **Droplet Precautions** are recommended, **surgical masks** function to reduce the transmission of large infectious droplets between the source (patient) and the mucosal surfaces of a susceptible host (healthcare personnel). When **Airborne Precautions** are recommended, **respirators and** other control measures, such as patient isolation in an **airborne infection isolation room (AIIR)** with specialized ventilation, are used to protect healthcare personnel from inhaling infectious particles that are of small diameter, likely to remain infectious over long time or distance, or both.

Airborne Transmission of Diseases: Factors that Affect Risk

Experimental studies as well as epidemiological evidence continue to inform our knowledge on how various diseases are transmitted. Aerosol studies show that infectious particles are released from a patient's respiratory tract in a wide range of sizes, and the size of a droplet or particle quickly decreases as water evaporates from it. Particles up to 100 micrometers in diameter are known to be inhalable into the nose or mouth. Smaller particles stay airborne longer than larger particles, which increases exposure time and the distance the particles might travel. Particles of various sizes can remain suspended in air for hours, especially with high rates of air movement in the room. Small particles can travel on air currents and potentially be carried long distances from the source of generation.

The other factor affecting risk of infection is how long a specific pathogen can remain viable and infectious while suspended in air. We know that certain pathogens, such as *M. tuberculosis*, are able to remain infectious for a long time in the air. It is likely that this feature plays a critical role in determining if a pathogen is transmitted

FIGURE 3: CDC AND HICPAC—DISEASES/PATHOGENS REQUIRING AIRBORNE PRECAUTIONS[1]

- Aerosolizable spore-containing powders such as Anthrax/*Bacillus anthracis*
- Aspergillosis (if massive soft tissue infection with copious drainage and repeated irrigations required)
- Varicella (chickenpox) and herpes zoster (disseminated or in an immunocompromised host)/Varicella-zoster virus
- Measles (rubeola)/Measles virus
- Monkeypox/Monkeypox virus
- Severe acute respiratory syndrome (SARS)/SARS-associated coronavirus (SARS-CoV)
- Smallpox (variola)/Variola virus
- Tuberculosis (TB)/*Mycobacterium tuberculosis*
- Novel or emerging pathogens and any other disease for which public health guidelines recommend airborne infection isolation[2]

[1] Some of these diseases may require additional precautions such as contact precautions.

[2] Hospitals need to look to CDC and public health authorities for the latest guidance. Respiratory protection may be advisable. For examples, see CDC's latest guidance for novel influenza A viruses associated with severe disease and Middle East Respiratory Syndrome Coronavirus.

FIGURE 4: CDC AND HICPAC—DISEASES/PATHOGENS REQUIRING DROPLET PRECAUTIONS[1, 2]

- Diphtheria, pharyngeal
- Epiglottitis, due to *Haemophilus influenzae* type b
- *Haemophilus influenzae* serotype b (Hib) (see disease-specific recommendations)
- Influenza viruses, seasonal[2]
- Meningitis
  - *Haemophilus influenzae,* type b known or suspected
  - *Neisseria meningitidis* (meningococcal) known or suspected
- Meningococcal disease sepsis, pneumonia (see also meningitis)
- Mumps (infectious parotitis)/ Mumps virus
- Mycoplasma pneumonia
- Parvovirus B19 infection (erythema infectiosum)
- Pertussis (whooping cough)
- Pharyngitis in infants and young children
- Pneumonia
  - Adenovirus
  - *Haemophilus influenzae,* serotype b, infants and children
  - Meningococcal
  - *Mycoplasma,* primary atypical
  - *Streptococcus,* Group A
- Pneumonic plague/*Yersinia pestis*
- Rhinovirus
- Rubella virus infection (German measles)/Rubella virus
- Streptococcal disease (group A streptococcus)
  - Skin, wound or burn, Major
  - Pharyngitis in infants and young children
  - Pneumonia
  - Scarlet fever in infants and young children
  - Serious invasive disease
- Viral hemorrhagic fevers due to Lassa, Ebola, Marburg, Crimean-Congo fever viruses[2]

[1] Some of these diseases may require additional precautions such as contact precautions.

[2] CDC currently recommends respirator use during aerosol-generating procedures for patients with suspected or confirmed seasonal influenza or viral hemorrhagic fevers. October 2014 CDC guidance for Ebola virus disease recommends at least an N95 respirator. See Figure 9 on page 24.

program is training staff on the hospital's policies regarding which situations should trigger respirator use. The training must be given to all caregivers and support staff, regardless of experience or skill set. Signage on patient rooms and notes in medical charts are additional ways in which respirator use policies and decisions are communicated between staff.

Personnel should be trained, consistent with facility respirator use policies, on how the patient's signs and symptoms and clinical judgment about potential diagnoses relate to risk-based decisions on respirator use. For example, when a patient presents in the emergency room with a cough, fever, fatigue, night sweats, unexplained weight loss, and loss of appetite, healthcare personnel should suspect tuberculosis and appropriately isolate the patient and wear respiratory protection pending definitive diagnosis. Healthcare personnel should also consider the possible diseases and pathogens associated with the diagnostic tests that have been ordered for the patient and the diseases currently circulating in the population when making decisions about respiratory protection. See "Appendix A" on page 41 for a table of symptoms, potential pathogens, and recommended precautions based on Table 2 in CDC and HICPAC's *2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings*.

be ruled out. Federal OSHA recommends that employers consider that the use of respiratory protection may be necessary when they are preparing for pandemic influenza. Specific recommendations about the need for Droplet or Airborne Precautions will be made at the time of an actual pandemic and based on such factors as transmissibility and severity of disease.

CDC and HICPAC recognize that certain infectious agents may be considered epidemiologically important and require enhanced protection, including the use of respiratory protection. Pathogens may be considered epidemiologically important if they have a propensity for transmission within healthcare facilities, are resistant to first-line therapies, or have high rates of morbidity and mortality. Pathogens may also be considered epidemiologically important if they are newly discovered, emerging, or re-emerging, and little or no information about their transmission, resistance, or disease rates is available. These pathogens may not be regularly encountered, but facilities and healthcare personnel must be prepared to consider and include these pathogens on differential diagnoses when appropriate, and implement infection control measures, including respiratory protection, when necessary.

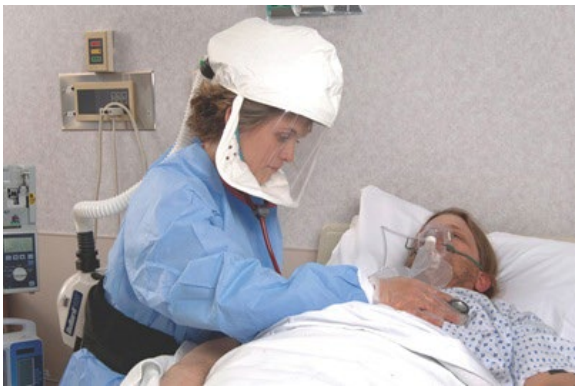


Photo: Bullard Safety

Healthcare personnel wearing a powered air-purifying respirator while treating a patient.

The OSHA Respiratory Protection Standard

Hospitals and all other employers who require employees to use respiratory protection for control of exposures to airborne contaminants, including ATD pathogens, must comply with Federal OSHA's Respiratory Protection standard, 29 CFR 1910.134, or the equivalent state standard. The OSHA Respiratory Protection standard establishes legally enforceable requirements about how respirators are to be used.

When respirator use is required, the Respiratory Protection standard requires that all employee use of respirators be done within the context of a comprehensive and effective respiratory protection program. The program must be in writing, have a designated respirator program administrator, and specify the employer's policies and procedures for the use of respiratory protection in the facility. OSHA requires each respiratory protection program to include several specific elements, but leaves the specifics of the policies and procedures used to meet these requirements up to individual employers. See Figure 6 on page 14 for a summary of the key requirements of the standard (as it pertains to the use of air-purifying respirators) and the section of this document titled "Developing a Respiratory Protection Program" on page 19 for more information.

The Respiratory Protection standard does not specify the circumstances under which healthcare personnel must use respirators for protection against ATD pathogens. However, OSHA requires employers to evaluate the respiratory hazards in the workplace, and expects that hospitals develop their respiratory protection policies based on CDC/HICPAC and other public health guidance from CDC, state, and local health departments. In

Types of Respiratory Protection

Respirators are devices worn over the nose and mouth to protect the wearer from hazardous materials in the breathing zone.

Respirators are available in many types (described in detail below), models, and sizes from several manufacturers for a variety of applications. The most common types of respirators in healthcare are filtering facepiece respirators and powered air-purifying respirators (PAPRs). Different types of respirators are designed to provide different levels of protection and to protect against different hazards. Professional judgment along with the type of airborne contaminant, its concentration, its potential to cause a health effect in exposed personnel, and any applicable regulation dictate the type of respirator that must be worn. When information regarding the exposure is limited, the decision will rely more heavily on professional judgment and more protective respirators may be selected for use. Each facility's written policies and training programs should specify whom to contact for questions or additional information.

OSHA has given each class of respirator an assigned protection factor (APF) to indicate the minimum level of protection that can be expected when the respirators are properly selected and used in a continuing, effective respiratory protection program. For higher-risk exposure situations (i.e., higher concentration of infectious particles), choosing a respirator with a higher APF provides a higher level of protection for the wearer. The APFs for different types of respirators are presented in Table 1 of the OSHA Respiratory Protection standard and in Appendix B of this document.

All respirators used in the workplace must be tested by the manufacturer and tested and certified by NIOSH. The two major types of respirators, air-purifying respirators and air-supplying respirators, are described below.

Air-Purifying Respirators

Air-purifying respirators (APRs) work by removing gases, vapors, aerosols (droplets and solid particles), or a combination of contaminants from the air through the use of filters, cartridges, or canisters. APRs with filters will remove particles and droplets (also called aerosols) from the inhaled air, while those with chemical cartridges or canisters are designed to remove gases and vapors. To help employers select the right protection for a specific contaminant, all filters, cartridges, and canisters must carry a label

Photo: MSA Safety, Inc.

Worker wearing a half mask elastomeric air-purifying respirator.

approved by NIOSH. As a secondary means of identification, cartridges and canisters must also be color-coded as specified by NIOSH. Air-purifying respirators do not provide clean breathing air from a source independent of the work area; therefore, APRs cannot be worn in an oxygen-deficient atmosphere.

Filters come in various degrees of filtration efficiency (see Figure 7 on page 17 for more information on the NIOSH filter classes); however, leakage around the facepiece of a respirator plays a larger role than filter efficiency in determining the protection provided. When APRs are required to provide protection from ATD pathogens, they must be fitted with particulate filters at least as efficient as an N95 filter, not cartridges or canisters for gases and vapors.

Types of Air-Purifying Respirators

Non-powered, or negative-pressure, respirators have a tight-fitting facepiece, which can be either a half mask that covers the nose and mouth or a full facepiece that covers the nose, mouth, and eyes. They may be disposable (or "single-use," meaning the filter is not replaceable and the respirator cannot be cleaned) filtering facepiece respirators where the entire facepiece is made of filtering material, or elastomeric respirators that have replaceable filters or cartridges.

"N95 respirator" is a term used in healthcare to refer to a half mask APR with a NIOSH-approved N95 particulate filter. An N95 respirator may be a filtering facepiece respirator or half mask elastomeric respirator; both have an APF of 10 and may be used in healthcare. These respirators are described as "negative-pressure" because the pressure inside the facepiece is negative during inhalation compared to the pressure outside the respirator. Filtering facepiece respirators are also available with other classes of filters and spray- or splash-resistant facemask material on the outside to protect the wearer from splashes (sometimes referred to as "surgical N95 respirators").

Powered air-purifying respirators (PAPRs) may be used in healthcare when aerosol-generating procedures are performed, by hospital first receivers, or when the respirator user is not able to wear a tight-fitting respirator. PAPRs have a battery-powered blower that forces air in the room through filters (for particles) or cartridges (for gases or vapors) to clean it before delivering it to the breathing zone of the wearer. High-efficiency (HE) filters are the only

Photo: Moldex

Worker wearing a filtering facepiece air-purifying respirator.

class of particulate filters available for powered air-purifying respirators. PAPRs are generally more protective than non-powered half mask respirators because the blower creates positive pressure inside the facepiece, reducing inward leakage of potentially contaminated air.

A PAPR may have a tight-fitting half or full facepiece or a loose-fitting facepiece, hood, or helmet. A PAPR has an OSHA APF of at least 25, compared to an APF of 10 for a filtering facepiece respirator or elastomeric half mask respirator; this means the PAPR reduces the aerosol concentration inhaled by the wearer to 1/25th of that in the room air, compared to a 1/10th reduction for half mask APRs. OSHA allows employers to use an APF of 1,000 for PAPRs with hoods when they have evidence from the manufacturer demonstrating performance at this level. OSHA does not require fit testing of loose-fitting PAPRs.

Air-Supplying Respirators

Air-supplying respirators (also known as atmosphere-supplying respirators) include supplied-air respirators and self-contained breathing apparatus (SCBAs). Air-supplying respirators work by providing clean breathing air from a source independent of the work area. Supplied-air respirators typically have higher APFs than APRs; the APF can be up to 1,000. These respirators obtain breathing air from a compressor or a large pressurized cylinder that is not carried by the user. SCBAs can have APFs of up to 10,000. They are usually equipped with a full facepiece and contain their own breathing air supply in a pressurized cylinder that is carried by the user.

FIGURE 7: NIOSH FILTER CLASSES

Filter Class	Description
N95	Filters at least 95% of airborne particles. Not resistant to oil.
N99	Filters at least 99% of airborne particles. Not resistant to oil.
N100	Filters at least 99.97% of airborne particles. Not resistant to oil.
R95	Filters at least 95% of airborne particles. Resistant to oil.
P95	Filters at least 95% of airborne particles. Oil proof (strongly resistant to oil).
P99	Filters at least 99% of airborne particles. Oil proof (strongly resistant to oil).
P100	Filters at least 99.97% of airborne particles. Oil proof (strongly resistant to oil).
HE (high-efficiency)	Filters at least 99.97% of airborne particles. For use on PAPRs only.

What are Air-Purifying Respirators?

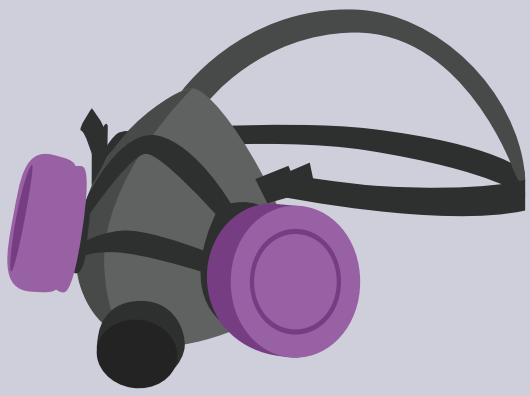
Air-purifying respirators (APRs) work by removing gases, vapors, aerosols (droplets and solid particles), or a combination of contaminants from the air through the use of filters, cartridges, or canisters. These respirators do not supply oxygen and therefore cannot be used in an atmosphere that is oxygen-deficient or immediately dangerous to life or health. The appropriate respirator for a particular situation will depend on the environmental contaminant(s).

Filtering Facepiece Respirator (FFR)

- Disposable
- Covers the nose and mouth
- Filters out particles such as dust, mist, and fumes
- Select from N, R, P series and 95, 99, 100 efficiency level
- Does NOT provide protection against gases and vapors
- Fit testing required

Elastomeric Half Facepiece Respirator

- Reusable facepiece and replaceable cartridges or filters
- Can be used to protect against gases, vapors, or particles, if equipped with the appropriate cartridge or filter
- Covers the nose and mouth
- Fit testing required

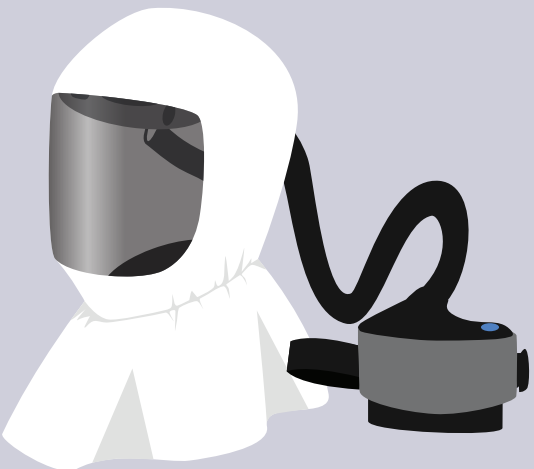


Elastomeric Full Facepiece Respirator

- Reusable facepiece and replaceable canisters, cartridges, or filters
- Can be used to protect against gases, vapors, or particles, if equipped with the appropriate cartridge, canister, or filter
- Provides eye protection
- More effective face seal than FFRs or elastomeric half-facepiece respirators
- Fit testing required

Powered Air-Purifying Respirator (PAPR)

- Reusable components and replaceable filters or cartridges
- Can be used to protect against gases, vapors, or particles, if equipped with the appropriate cartridge, canister, or filter
- Battery-powered with blower that pulls air through attached filters or cartridges
- Provides eye protection
- Low breathing resistance
- Loose-fitting PAPR does NOT require fit testing and can be used with facial hair
- Tight-fitting PAPR requires fit testing



Centers for Disease Control and Prevention
National Institute for Occupational Safety and Health

A Guide to Air-Purifying Respirators

Air-purifying respirators (APRs) work by removing gases, vapors, aerosols (airborne droplets and solid particles), or a combination of contaminants from the air through the use of filters, cartridges, or canisters. These respirators do not supply oxygen from other than the working atmosphere, and therefore cannot be used in an atmosphere that is oxygen-deficient[1] or immediately dangerous to life or health[2] (IDLH). The appropriate respirator for a particular situation will depend on the environment and the contaminant(s).

Filtering Facepiece Respirators

Photo courtesy of Shutterstock

Filtering facepiece respirators (FFRs) remove particles from the inhaled airstream of the wearer. They may be referred to as "N95 respirators". They are also sometimes called disposable respirators because the entire respirator is discarded when it becomes unsuitable for further use because of hygiene, excessive resistance, or physical damage.

FFRs are divided into classes based on their filtration capabilities. "N95" is a term referring to the N95 filter class, which removes at least 95% of airborne particles using a "most-penetrating" sized particle during "worst case" NIOSH testing. The FFR classes include N (not resistant to oil), R (somewhat resistant to oil), and P (strongly resistant to oil) series, which are available at 95, 99, and 100 filtration efficiency levels.

FFRs provide protection against particles, but not gases or vapors, and should not be used for respiratory protection to protect against hazardous gases or vapors. These classes and oil-resistant designations are applicable to all types of air-purifying respirators.

N95, N99, N100 – Filters at least 95%, 99%, 99.97% of airborne particles. Not resistant to oil.

R95, R99, R100 – Filters at least 95%, 99%, 99.97% of airborne particles. Somewhat resistant to oil.

P95, P99, P100 – Filters at least 95%, 99%, 99.97% of airborne particles. Strongly resistant to oil.

FFRs form a tight seal against the user's face, covering the nose and mouth. As the user inhales air through the facepiece, particulate material collects on the fibrous material of the filter, which removes the particulate contaminant from the airstream. An FFR may have an exhalation valve located on the filter, which reduces breathing resistance during exhalation.

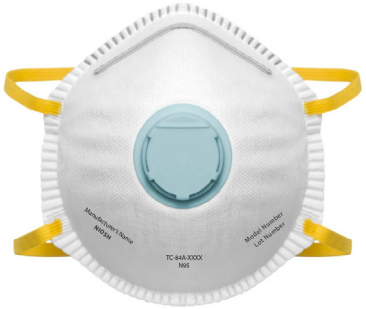


Photo courtesy of Shutterstock

[1] OSHA CFR 1910.134(b) defines oxygen-deficient as an atmosphere with an oxygen content below 19.5% by volume.

[2] IDLH values can be found at: https://www.cdc.gov/niosh/idlh/intridl4.html

Centers for Disease Control and Prevention
National Institute for Occupational Safety and Health

Filtering Facepiece Respirators (continued)

Because the effectiveness of this type of respirator relies upon the breathing air travelling through the filter, a tight seal to the user's face is very important. Therefore, the Occupational Safety and Health Administration (OSHA) (29 CFR 1910.134) requires an annual respirator fit test to ensure that users receive the expected level of protection by minimizing any leakage of unfiltered contaminant through gaps between the face and facepiece. When used with a respiratory protection program, including annual fit-testing, an FFR will reduce exposures by 1/10th. Another way to express this is that the OSHA Assigned Protection Factor (APF) is 10. For proper donning (putting on) and doffing (taking off) techniques of this type of respiratory protection, refer to the manufacturer's instructions.

Elastomeric Half Facepiece Respirators

Photo courtesy on Shutterstock

Elastomeric half facepiece and quarter facepiece respirators are reusable devices with exchangeable cartridges or filters. The facepiece is made of rubber or silicone that forms a seal against the user's face. The facepiece of the elastomeric respirator must form a tight seal against the user's face, covering the nose and mouth just like the disposable FFRs; therefore, fit testing is required. The attached filters and cartridges are replaceable and can be easily changed. Elastomeric respirators can be used to protect against gases, vapors, and/or particles if equipped with the appropriate filters and/or cartridges.

When cleaning and sanitizing a respirator, the manufacturer's guidelines should always be followed. Check the manufacturer's website if guidance is not included with the packaging of the respirator. If guidance isn't available, OSHA provides general cleaning and sanitizing guidelines. Elastomeric half facepiece respirators have an APF of 10.

OSHA Definitions of Filter and Cartridge/Canister, CFR 1910.134(b)

Filter or air-purifying element means a component used in respirators to remove solid or liquid aerosols from the inspired air.

Canister[3] or cartridge means a container with a filter, sorbent, catalyst, or combination of these items, which removes specific contaminants from the air passed through the container.

Elastomeric Full Facepiece Respirators

Photo courtesy of Honeywell International Inc

Like the elastomeric half facepiece respirator, the elastomeric full facepiece respirator is a reusable device. This type of respiratory protective device uses exchangeable cartridges, canisters, or filters. It is also made of rubber or silicone, but the elastomeric full facepiece has a clear plastic lens that covers the face and provides eye protection. The full facepiece covers roughly from the hairline to below the chin. These types of respirators tend to provide a more reliable face seal than FFRs or elastomeric half facepiece respirators. Since these respirators cover the user's face and eyes, they can also be used to protect against liquid splashes and irritating vapors. Annual fit testing is still required. Elastomeric full facepiece respirators have an APF of 50.

[3] A canister on a tight fitting full facepiece or PAPR can be used for escape from unknown concentrations of gas or vapor hazards whereas a cartridge based system cannot be used in this capacity.

Powered Air-Purifying Respirator

Photo courtesy of Honeywell International Inc.

Powered Air-Purifying Respirators (PAPRs) are battery-powered devices that use a blower to pull air through attached filters (for particles) or cartridges (for gases or vapors) to clean it before delivering it to the breathing zone of the wearer. High-efficiency (HE) filters are the only class of particulate filters available for powered air-purifying respirators. The benefits of PAPRs include a low breathing resistance with a high level of protection. PAPRs can be used to protect against gases, vapors, or particles, if equipped with the appropriate cartridge, canister, or filter. PAPRs are generally more protective than non-powered half mask respirators because the blower creates positive pressure inside the facepiece under most work conditions, which reduces inward leakage of potentially contaminated air. A half facepiece PAPR has an APF of 50, and a full facepiece PAPR has an APF of 1,000.

A PAPR may have a tight-fitting half or full facepiece or a loose-fitting facepiece, hood, or helmet. The loose-fitting PAPR does not require fit testing. Loose-fitting PAPRs may be an alternative for users who have facial hair or are otherwise not able to pass a fit test with a tight-fitting respirator. However, OSHA does require fit testing for a tight-fitting PAPR[3]. Loose-fitting PAPRs have an APF of 25. Loose-fitting PAPRs with a helmet or hood can have an APF up to 1,000 if supported by manufacturer-supplied test evidence.

Photo courtesy of MSA

References

Occupational Safety and Health Administration (OSHA) CFR 1910.134 https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=12716

National Institute for Occupational Safety and Health (NIOSH): NIOSH Guide to Industrial Respiratory Protection. DHHS (NIOSH) Publication No. 87-116. Cincinnati, Ohio: NIOSH, 1987. http://www.cdc.gov/niosh/docs/87-116/

National Institute for Occupational Safety and Health (NIOSH): Hospital Respiratory Protection Program Toolkit. DHHS (NIOSH) Publication No. 2015-117. Pittsburgh, Pennsylvania: NIOSH, 2015. https://www.cdc.gov/niosh/docs/2015-117/pdfs/2015-117.pdf?id=10.26616/NIOSHPUB2015117

[4] OSHA CFR 1910.134(f)(8) states that fit testing of tight-fitting atmosphere-supplying respirators and tight-fitting powered air-purifying respirators shall be accomplished by performing quantitative or qualitative fit testing in the negative pressure mode, regardless of the mode of operation (negative or positive pressure) that is used for respiratory protection.

DOI: https://doi.org/10.26616/NIOSHPUB2018176
DHHS (NIOSH) Publication No. 2018-176
August 2018

What are Air-Purifying Respirators?

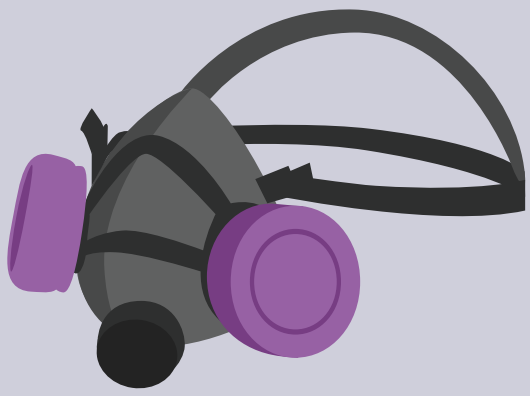
Air-purifying respirators (APRs) work by removing gases, vapors, aerosols (droplets and solid particles), or a combination of contaminants from the air through the use of filters, cartridges, or canisters. These respirators do not supply oxygen and therefore cannot be used in an atmosphere that is oxygen-deficient or immediately dangerous to life or health. The appropriate respirator for a particular situation will depend on the environmental contaminant(s).

Filtering Facepiece Respirator (FFR)

- Disposable
- Covers the nose and mouth
- Filters out particles such as dust, mist, and fumes
- Select from N, R, P series and 95, 99, 100 efficiency level
- Does NOT provide protection against gases and vapors
- Fit testing required

Elastomeric Half Facepiece Respirator

- Reusable facepiece and replaceable cartridges or filters
- Can be used to protect against gases, vapors, or particles, if equipped with the appropriate cartridge or filter
- Covers the nose and mouth
- Fit testing required

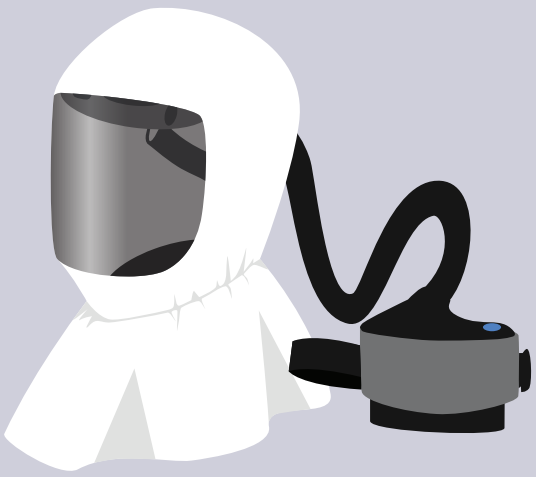


Elastomeric Full Facepiece Respirator

- Reusable facepiece and replaceable canisters, cartridges, or filters
- Can be used to protect against gases, vapors, or particles, if equipped with the appropriate cartridge, canister, or filter
- Provides eye protection
- More effective face seal than FFRs or elastomeric half-facepiece respirators
- Fit testing required

Powered Air-Purifying Respirator (PAPR)

- Reusable components and replaceable filters or cartridges
- Can be used to protect against gases, vapors, or particles, if equipped with the appropriate cartridge, canister, or filter
- Battery-powered with blower that pulls air through attached filters or cartridges
- Provides eye protection
- Low breathing resistance
- Loose-fitting PAPR does NOT require fit testing and can be used with facial hair
- Tight-fitting PAPR requires fit testing



Centers for Disease Control and Prevention
National Institute for Occupational Safety and Health

EXIBIT #23

New York Consolidated Laws, Education Law - EDN § 3020-a. Disciplinary procedures and penalties

Current as of January 01, 2021 | Updated by FindLaw Staff

1. Filing of charges. All charges against a person enjoying the benefits of tenure as provided in subdivision three of section eleven hundred two, and sections twenty-five hundred nine, twenty-five hundred seventy-three, twenty-five hundred ninety-j , three thousand twelve and three thousand fourteen of this chapter shall be in writing and filed with the clerk or secretary of the school district or employing board during the period between the actual opening and closing of the school year for which the employed is normally required to serve. Except as provided in subdivision eight of section twenty-five hundred seventy-three and subdivision seven of section twenty-five hundred ninety-j of this chapter, no charges under this section shall be brought more than three years after the occurrence of the alleged incompetency or misconduct, except when the charge is of misconduct constituting a crime when committed.

2. Disposition of charges. a. Upon receipt of the charges, the clerk or secretary of the school district or employing board shall immediately notify said board thereof. Within five days after receipt of charges, the employing board, in executive session, shall determine, by a vote of a majority of all the members of such board, whether probable cause exists to bring a disciplinary proceeding against an employee pursuant to this section. If such determination is affirmative, a written statement specifying (i) the charges in detail, (ii) the maximum penalty which will be imposed by the board if the employee does not request a hearing or that will be sought by the board if the employee is found guilty of the charges after a hearing and (iii) the employee's rights under this section, shall be immediately forwarded to the accused employee by certified or registered mail, return receipt requested or by personal delivery to the employee.

b. The employee may be suspended pending a hearing on the charges and the final determination thereof. The suspension shall be with pay, except the employee may be suspended without pay if the employee has entered a guilty plea to or has been convicted of a felony crime concerning the criminal sale or possession of a controlled substance, a precursor of a controlled substance, or drug paraphernalia as defined in article two hundred twenty or two hundred twenty-one of the penal law; or a felony crime involving the physical abuse of a minor or student.

c. Where charges of misconduct constituting physical or sexual abuse of a student are brought on or after July first, two thousand fifteen, the board of education may suspend the employee without pay pending an expedited hearing pursuant to subparagraph (i-a) of paragraph c of subdivision three of this section. Notwithstanding any other law, rule, or regulation to the contrary, the commissioner shall establish a process in regulations for a probable cause hearing before an impartial hearing officer within ten days to determine whether the decision to suspend an employee without pay pursuant to this paragraph should be continued or reversed. The process for selection of an impartial hearing officer shall be as similar as possible to the regulatory framework for the appointment of an impartial hearing officer for due process complaints pursuant to section forty-four hundred four of this chapter. The hearing officer shall determine whether probable cause supports the charges and shall reverse the decision of the board of education to suspend the employee without pay and reinstate such pay upon a finding that probable cause does not support the charges. The hearing officer may also reinstate pay upon a written determination that a suspension without pay is grossly disproportionate in light of all surrounding circumstances. Provided, further, that such an employee shall be eligible to receive reimbursement for withheld pay and accrued interest at a rate of six percent compounded annually if the hearing officer finds in his or her favor, either at the probable cause hearing or in a final determination pursuant to the expedited hearing held pursuant to subparagraph (i-a) of paragraph c of subdivision three of this section. Any suspension without pay shall last no longer than one hundred and twenty days from the decision of the board of education to suspend the employee without pay and such suspension shall

only relate to employee compensation, exclusive of other benefits and guarantees. Notwithstanding any other provision of law or regulation to the contrary, any provision of a collective bargaining agreement entered into by the city of New York as of April first, two thousand fifteen, that provides for suspension without pay for offenses as specified in this paragraph shall supersede the provisions hereof and shall continue in effect without modification and may be extended.

d. The employee shall be terminated without a hearing, as provided for in this section, upon conviction of a sex offense, as defined in subparagraph two of paragraph b of subdivision seven-a of section three hundred five of this chapter. To the extent this section applies to an employee acting as a school administrator or supervisor, as defined in subparagraph three of paragraph b of subdivision seven-b of section three hundred five of this chapter, such employee shall be terminated without a hearing, as provided for in this section, upon conviction of a felony offense defined in subparagraph two of paragraph b of subdivision seven-b of section three hundred five of this chapter.

e. (i) For hearings commenced by the filing of charges prior to July first, two thousand fifteen, within ten days of receipt of the statement of charges, the employee shall notify the clerk or secretary of the employing board in writing whether he or she desires a hearing on the charges and when the charges concern pedagogical incompetence or issues involving pedagogical judgment, his or her choice of either a single hearing officer or a three member panel, provided that a three member panel shall not be available where the charges concern pedagogical incompetence based solely upon a teacher's or principal's pattern of ineffective teaching or performance as defined in section three thousand twelve-c of this article. All other charges shall be heard by a single hearing officer.

(ii) All hearings commenced by the filing of charges on or after July first, two thousand fifteen shall be heard by a single hearing officer.

f. The unexcused failure of the employee to notify the clerk or secretary of his or her desire for a hearing within ten days of the receipt of charges shall be deemed a waiver of the right to a hearing. Where an employee requests a hearing in the manner provided for by this section, the clerk or secretary of the board shall, within three working days of receipt of the employee's notice or request for a hearing, notify the commissioner of the need for a hearing. If the employee waives his or her right to a hearing the employing board shall proceed, within fifteen days, by a vote of a majority of all members of such board, to determine the case and fix the penalty, if any, to be imposed in accordance with subdivision four of this section.

3. Hearings. a. Notice of hearing. Upon receipt of a request for a hearing in accordance with subdivision two of this section, the commissioner shall forthwith notify the American Arbitration Association (hereinafter "association") of the need for a hearing and shall request the association to provide to the commissioner forthwith a list of names of persons chosen by the association from the association's panel of labor arbitrators to potentially serve as hearing officers together with relevant biographical information on each arbitrator. Upon receipt of said list and biographical information, the commissioner shall forthwith send a copy of both simultaneously to the employing board and the employee. The commissioner shall also simultaneously notify both the employing board and the employee of each potential hearing officer's record in the last five cases of commencing and completing hearings within the time periods prescribed in this section.

b. (i) Hearing officers. All hearings pursuant to this section shall be conducted before and by a single hearing officer selected as provided for in this section. A hearing officer shall not be eligible to serve in such position if he or she is a resident of the school district, other than the city of New York, under the jurisdiction of the employing board, an employee, agent or representative of the employing board or of any labor organization representing employees of such employing board, has served as such agent or representative within two years of the date of the scheduled hearing, or if he or she is then serving as a mediator or fact finder in the same school district.

(A) Notwithstanding any other provision of law, for hearings commenced by the filing of charges prior to April first, two thousand twelve, the hearing officer shall be compensated by the department with the customary fee paid for service as an arbitrator under the auspices of the association for each day of actual service plus necessary travel and other reasonable expenses incurred in the performance of his or her duties. All other expenses of the disciplinary proceedings commenced by the filing of charges prior to April first, two thousand twelve shall be paid in accordance with rules promulgated by the commissioner. Claims for such compensation for days of actual service and reimbursement for necessary travel and other expenses for hearings commenced by the filing of charges prior to April first, two thousand twelve shall be paid from an appropriation for such purpose in the order in which they have been approved by the commissioner for payment, provided payment shall first be made for any other hearing costs payable by the commissioner, including the costs of transcribing the record, and provided further that no such claim shall be set aside for insufficiency of funds to make a complete payment, but shall be eligible for a partial payment in one year and shall retain its priority date status for appropriations designated for such purpose in future years.

(B) Notwithstanding any other provision of law, rule or regulation to the contrary, for hearings commenced by the filing of charges on or after April first, two thousand twelve, the hearing officer shall be compensated by the department for each day of actual service plus necessary travel and other reasonable expenses incurred in

(i-a)(A) Where charges of misconduct constituting physical or sexual abuse of a student are brought, the hearing shall be conducted before and by a single hearing officer in an expedited hearing, which shall commence within seven days after the pre-hearing conference and shall be completed within sixty days after the pre-hearing conference. The hearing officer shall establish a hearing schedule at the pre-hearing conference to ensure that the expedited hearing is completed within the required timeframes and to ensure an equitable distribution of days between the employing board and the charged employee. Notwithstanding any other law, rule or regulation to the contrary, no adjournments may be granted that would extend the hearing beyond such sixty days, except as authorized in this subparagraph. A hearing officer, upon request, may grant a limited and time specific adjournment that would extend the hearing beyond such sixty days if the hearing officer determines that the delay is attributable to a circumstance or occurrence substantially beyond the control of the requesting party and an injustice would result if the adjournment were not granted.

(B) The commissioner shall annually inform all hearing officers who have heard cases pursuant to this section during the preceding year that the time periods prescribed in this subparagraph for conducting expedited hearings are to be strictly followed and failure to do so shall be considered grounds for the commissioner to exclude such individual from the list of potential hearing officers sent to the employing board and the employee for such expedited hearings.

(ii) The hearing officer selected to conduct a hearing under this section shall, within ten to fifteen days of agreeing to serve in such position, hold a pre-hearing conference which shall be held in the school district or county seat of the county, or any county, wherein the employing school board is located. The pre-hearing conference shall be limited in length to one day except that the hearing officer, in his or her discretion, may allow one additional day for good cause shown.

(iii) At the pre-hearing conference the hearing officer shall have the power to:

(A) issue subpoenas;

(B) hear and decide all motions, including but not limited to motions to dismiss the charges;

(C) hear and decide all applications for bills of particular or requests for production of materials or information, including, but not limited to, any witness statement (or statements), investigatory statement (or statements) or note (notes), exculpatory evidence or any other evidence, including district or student records, relevant and material to the employee's defense.

(iv) Any pre-hearing motion or application relative to the sufficiency of the charges, application or amendment thereof, or any preliminary matters shall be made upon written notice to the hearing officer and the adverse party no less than five days prior to the date of the pre-hearing conference. Any pre-hearing motions or applications not made as provided for herein shall be deemed waived except for good cause as determined by the hearing officer.

(v) In the event that at the pre-hearing conference the employing board presents evidence that the professional license of the employee has been revoked and all judicial and administrative remedies have been exhausted or foreclosed, the hearing officer shall schedule the date, time and place for an expedited hearing, which hearing shall commence not more than seven days after the pre-hearing conference and which shall be limited to one day. The expedited hearing shall be held in the local school district or county seat of the county or any county, wherein the said employing board is located. The expedited hearing shall not be postponed except upon the request of a party and then only for good cause as determined by the hearing officer. At such hearing, each party shall have equal time in which to present its case.

(vi) During the pre-hearing conference, the hearing officer shall determine the reasonable amount of time necessary for a final hearing on the charge or charges and shall schedule the location, time(s) and date(s) for the final hearing. The final hearing shall be held in the local school district or county seat of the county, or any county, wherein the said employing school board is located. In the event that the hearing officer determines that the nature of the case requires the final hearing to last more than one day, the days that are scheduled for the final hearing shall be consecutive. The day or days scheduled for the final hearing shall not be postponed except upon the request of a party and then only for good cause shown as determined by the hearing officer. In all cases, the final hearing shall be completed no later than sixty days after the pre-hearing conference unless the hearing officer determines that extraordinary circumstances warrant a limited extension.

(vii) All evidence shall be submitted by all parties within one hundred twenty-five days of the filing of charges and no additional evidence shall be accepted after such time, absent extraordinary circumstances beyond the control of the parties.

d. Limitation on claims. Notwithstanding any other provision of law, rule or regulation to the contrary, no payments shall be made by the department pursuant to this subdivision on or after April first, two thousand twelve for: (i) compensation of a hearing officer or hearing panel member, (ii) reimbursement of such hearing officers or panel members for necessary travel or other expenses incurred by them, or (iii) for other hearing expenses on a claim submitted later than one year after the final disposition of the hearing by any means, including settlement, or

New York Consolidated Laws, Civil Service Law - CVS§ 75. Removal and other disciplinary action

Current as of January 01, 2021 | Updated by FindLaw Staff

Welcome to FindLaw's Cases & Codes, a free source of state and federal court opinions, state laws, and the United States Code. For more information about the legal concepts addressed by these cases and statutes, visit FindLaw's Learn About the Law.

Search New York Codes

Search by Keyword or Citation

Enter Keyword or Citation SEARCH

« Prev Next »

1. Removal and other disciplinary action. A person described in paragraph (a) or paragraph (b), or paragraph (c), or paragraph (d), or paragraph (e) of this subdivision shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section.

(a) A person holding a position by permanent appointment in the competitive class of the classified civil service, or

(b) a person holding a position by permanent appointment or employment in the classified service of the state or in the several cities, counties, towns, or villages thereof, or in any other political or civil division of the state or of a municipality, or in the public school service, or in any public or special district, or in the service of any authority, commission or board, or in any other branch of public service, who was honorably discharged or released under honorable circumstances from the armed forces of the United States having served therein as such member in time of war as defined in section eighty-five of this chapter, or who is an exempt volunteer firefighter as defined in the general municipal law, except when a person described in this paragraph holds the position of private secretary, cashier or deputy of any official or department, or

(c) an employee holding a position in the non-competitive or labor class other than a position designated in the rules of the state or municipal civil service commission as confidential or requiring the performance of functions influencing policy, who since his or her last entry into service has completed at least five years of continuous service in the non-competitive or labor class in a position or positions not so designated in the rules as confidential or requiring the performance of functions influencing policy, or

(d) an employee in the service of the City of New York holding a position as Homemaker or Home Aide in the non-competitive class, who since his last entry into city service has completed at least three years of continuous service in such position in the non-competitive class, or

(e) an employee in the service of a police department within the state of New York holding the position of detective for a period of three continuous years or more; provided, however, that a hearing shall not be required when reduction in rank from said position is based solely on reasons of the economy, consolidation or abolition of functions, curtailment of activities or otherwise.

2. Procedure. An employee who at the time of questioning appears to be a potential subject of disciplinary action shall have a right to representation by his or her certified or recognized employee organization under article fourteen of this chapter and shall be notified in advance, in writing, of such right. A state employee who is designated managerial or confidential under article fourteen of this chapter, shall, at the time of questioning, where it appears that such employee is a potential subject of disciplinary action, have a right to representation and shall be notified in advance, in

Employee organization selected by the employee action, in writing, of such right. Representation and shall be afforded the advantage of writing, of such right. If representation is requested a reasonable period of time shall be afforded to obtain such representation. If the employee is unable to obtain representation within a reasonable period of time the employer has the right to then question the employee. A hearing officer under this section shall have the power to find that a reasonable period of time was or was not afforded. In the event the hearing officer finds that a reasonable period of time was not afforded then any and all statements obtained from said questioning as well as any evidence or information obtained as a result of said questioning shall be excluded, provided, however, that this subdivision shall not modify or replace any written collective agreement between a public employer and employee organization negotiated pursuant to article fourteen of this chapter. A person against whom removal or other disciplinary action is proposed shall have written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him and shall be allowed at least eight days for answering the same in writing. The hearing upon such charges shall be held by the officer or body having the power to remove the person against whom such charges are preferred, or by a deputy or other person designated by such officer or body in writing for that purpose. In case a deputy or other person is so designated, he shall, for the purpose of such hearing, be vested with all the powers of such officer or body and shall make a record of such hearing which shall, with his recommendations, be referred to such officer or body for review and decision. The person or persons holding such hearing shall, upon the request of the person against whom charges are preferred, permit him to be represented by counsel, or by a representative of a recognized or certified employee organization, and shall allow him to summon witnesses in his behalf. The burden of proving incompetency or misconduct shall be upon the person alleging the same. Compliance with technical rules of evidence shall not be required.

3. Suspension pending determination of charges; penalties. Pending the hearing and determination of charges of incompetency or misconduct, the officer or employee against whom such charges have been preferred may be suspended without pay for a period not exceeding thirty days. If such officer or employee is found guilty of the charges, the penalty or punishment may consist of a reprimand, a fine not to exceed one hundred dollars to be deducted from the salary or wages of such officer or employee, suspension without pay for a period not exceeding two months, demotion in grade and title, or dismissal from the service; provided, however, that the time during which an officer or employee is suspended without pay may be considered as part of the penalty. If he is acquitted, he shall be restored to his position with full pay for the period of suspension less the amount of any unemployment insurance benefits he may have received during such period. If such officer or employee is found guilty, a copy of the charges, his written answer thereto, a transcript of the hearing, and the determination shall be filed in the office of the department or agency in which he has been employed, and a copy thereof shall be filed with the civil service commission having jurisdiction over such position. A copy of the transcript of the hearing shall, upon request of the officer or employee affected, be furnished to him without charge.

3-a. Suspension pending determination of charges and penalties relating to police officers of the police department of the city of New York. Pending the hearing and determination of charges of incompetency or misconduct, a police officer employed by the police department of the city of New York may be suspended without pay for a period not exceeding thirty days. If such officer is found guilty of the charges, the police commissioner of such department may punish the police officer pursuant to the provisions of sections 14-115 and 14-123 of the administrative code of the city of New York.

4. Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than eighteen months after the occurrence of the alleged incompetency or misconduct complained of and described in the charges or, in the case of a state employee who is designated managerial or confidential under article fourteen of this chapter, more than one year after the occurrence of the alleged incompetency or misconduct complained of and described in the charges, provided, however, that such limitations shall not apply where the incompetency or misconduct complained of and described in the charges would, if proved in a court of appropriate jurisdiction, constitute a crime.

« Prev

Next »

Chapter 1 - DEPARTMENT OF SANITATION

Section 16-101

Section 16-101

§ 16-101 Definitions. When used in this title the following terms shall have the following meanings:

(1) "Department" shall mean the department of sanitation.

(2) "Commissioner" shall mean the commissioner of sanitation.

(3) "Street" includes street, avenue, road, alley, lane, highway, boulevard, concourse, driveway, culvert and crosswalk, and every class of road, square and place, and all parkways and through vehicular park drives except a road within any park or a wharf, pier, bulkhead, or slip by law committed to the custody, and control of the department of ports and terminals.

Section 16-102

Section 16-102

§ 16-102 Secretary. The commissioner shall appoint and at pleasure may remove a secretary of the department.

Section 16-103

Section 16-106

§ 16-106 Removal and suspension of employees. a. The commissioner, in his or her discretion, shall have power to punish any member of the uniformed force who has been guilty of:

1. any legal or criminal offense,

2. neglect of duty,

3. violation of rules,

4. neglect or disobedience of orders,

5. incapacity,

6. absence without leave,

7. conduct injurious to the public peace or welfare,

8. immoral conduct, or

9. any breach of discipline,

by forfeiting or withholding pay for a specified time, not exceeding thirty days; by suspension, without pay during such suspension, for a period not exceeding thirty days; or by dismissal from the force. The commissioner may withhold pay, salary or compensation from any member or members of the force for absence for any cause without leave.

b. All pay deducted or forfeited under the provisions of this section shall be retained by the commissioner of finance to the credit of the department, and shall be applicable, in the discretion of the commissioner, to any of the purposes of such department as if originally appropriated therefor.

c. A member of the department shall be dismissed only after he or she has been informed of the cause of the proposed dismissal and has been allowed an opportunity of making an explanation.

d. In the event of the dismissal of any member of the force, he or she shall

EXIBIT #7

ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
REQUIRING COVID-19 VACCINATION AND FACE COVERINGS
IN CHILD CARE AND EARLY INTERVENTION PROGRAMS

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in New York City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

WHEREAS, on March 25, 2020, the Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 556 of the Charter, and Section 3.01(c) of the Health Code ("Health Code"), the Department of Health and Mental Hygiene ("Department") is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of and the protection of public health; and

WHEREAS, the US Centers for Disease Control and Prevention ("CDC") reports that variants of COVID-19, identified as "variants of concern," have emerged in the United States, and such variants currently account for the majority of COVID-19 cases sequenced in New York City and are more transmissible than earlier variants; and

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, child care programs are essential services needed and utilized by hundreds of thousands of children and families across the City, including those in communities that have been disproportionately affected by the COVID-19 pandemic; and

WHEREAS, pursuant to Article 25 of the State Public Health Law, the New York City Early Intervention Program ("Early Intervention") annually provides essential services to over 30,000 eligible infants and toddlers under the age of 3 with, or at risk of experiencing, developmental delays or disabilities; said services being provided in the family home or at other locations; and

WHEREAS, on September 16, 2021, emergency regulations of the State Office of Children and Family Services requiring all persons age 2 and older who are able to medically tolerate a face covering to wear a face covering indoors at State-licensed child care programs went into effect (N.Y.S. Reg. Oct. 6, 2021, at 4-6); and

WHEREAS, emergency regulations of the State Department of Health require that, by September 27, 2021, staff at hospitals and nursing homes, and by October 7, 2021, staff at other facilities, such as adult care facilities, must be vaccinated against COVID-19 (10 N.Y.C.R.R §2.61); and

WHEREAS, requiring vaccination of staff in child care and Early Intervention programs, and use of face coverings by both staff and children in such programs, are among the most effective COVID-19 mitigation responses and will potentially save lives, protect public health, and promote public safety; and

WHEREAS, on August 24, 2021, I issued an Order requiring that Department of Education employees, contractors, and visitors provide proof of COVID-19 vaccination before entering a DOE building or school setting, and such Order was re-issued on September 12 and 15, 2021, and subsequently amended on September 28, 2021, and such Orders and amendment were ratified by the New York City Board of Health on September 17, 2021 and October 18, 2021; and

WHEREAS, on September 12, 2021, I issued an Order requiring that staff of early childhood programs or services provided under contract with the Department of Education or the Department of Youth and Community Development provide proof of COVID-19 vaccination; and

WHEREAS, pursuant to Section 17-109(b) of the Administrative Code, the Department may adopt vaccination measures to effectively prevent the spread of communicable diseases; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent action is needed to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

NOW THEREFORE, I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and hereby order that:

1. No later than December 20, 2021, every child care program and Early Intervention provider agency must exclude from the premises any staff member who has not provided proof of vaccination against COVID-19, except as provided in paragraph 6 of this Order.

2. All staff members hired on or after the effective date of this Order at any child care program or Early Intervention provider agency must provide proof of vaccination against COVID-19 to their employer on or before their start date, except as provided in paragraph 6 of this Order.

3. All staff members and individuals 2 years of age and older who can medically tolerate a face covering must wear a face covering while at a child care program, during provision of Early Intervention services, and during off-site trips and excursions, provided that a child care program or Early Intervention provider may modify this requirement where it determines it appropriate based on the developmental needs of the child. This face covering requirement applies to family members who participate in the provision of services or who are present with the child and the staff member while services are being provided. A face covering is not required when an individual is sleeping, or actively eating or drinking. A face covering is also not required for an individual who is not participating in Early Intervention services, such as a household member, when such services are provided in a private home.

4. Each child care program and Early Intervention provider must securely maintain staff member records of proof of vaccination against COVID-19. These records may be kept electronically or on paper. These records must include the following:
   a) each staff member's name and start date.
   b) the type of proof of vaccination submitted; the date such proof was collected; and whether the person is fully vaccinated, as defined in this Order.
   c) for any staff member who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose must be provided, which must be no later than 45 days after the first dose.

d) for any staff member who did not submit proof of COVID-19 vaccination because of a reasonable accommodation, the record must indicate that such accommodation was provided, and the child care program or Early Intervention provider agency must separately maintain records stating the basis for such accommodation and the supporting documentation provided by such staff in accordance with applicable laws, including the Americans with Disabilities Act.

5. For the purposes of this Order:

"Child care" or "Child care program" means any person or entity that is regulated under Article 43 or 47 of the Health Code, is required to be licensed or registered by the State Office of Children and Family Services, or is an enrolled legally exempt group child care program pursuant to the Social Services Law.

"Early Intervention provider" or "Early Intervention provider agency" means any person or entity holding a provider agreement for the provision of Early Intervention services in New York City, including service coordination, evaluation, therapeutic and educational services, pursuant to Article 25 of the Public Health Law.

"Fully vaccinated" means at least two weeks have passed after an individual has received either: (a) the second dose in a two-dose series of a COVID-19 vaccine, or (b) a single-dose of a COVID-19 vaccine that requires only one dose of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization.

"Premises" means locations where children are regularly present at child care programs, or any setting or location where Early Intervention services are provided as authorized by the New York City Early Intervention Official or such official's designee.

"Proof of vaccination" against COVID-19 means one of the following demonstrating that an individual has either: (a) been fully vaccinated against COVID-19, or (b) received the first dose of a two-dose COVID-19 vaccine, provided that staff providing proof of only a first dose must also provide proof of receiving the second dose of that vaccine within 45 days after receiving the first dose. Such proof of vaccination includes, but may not be limited to, the following:

1) CDC Vaccination Card. A digital photo or photocopy of this card is also acceptable.
2) NYC Vaccination Record or other official immunization record, including from a health care provider. A digital photo or photocopy of this is also acceptable.
3) NYC COVID Safe App showing a vaccination record.
4) CLEAR Health Pass.
5) NYS Excelsior Pass/Excelsior Pass Plus.

"Staff member" means an employee, contractor, volunteer or intern of a child care program or Early Intervention provider, who works in-person on the premises or provides Early Intervention in-person therapeutic, developmental or education services, or conducts assessments for the purpose of determining children's eligibility for such services; a graduate, undergraduate or high school student placed by their educational institution at a child care program or with an Early Intervention provider as part of an academic program and who works in-person on the premises; a specialist providing support services, therapy, special education or other services at a child care program or with an Early Intervention provider to an individual child and who works in-person on the premises; or a person employed by a contractor of a child care program or an Early Intervention provider, including an independent contractor, who works in-person on the premises. "Staff member" does not include a person who is onsite briefly for a limited purpose, such as for a delivery or pick-up or to perform a repair.

6. Nothing in this Order shall be construed to prohibit any reasonable accommodations otherwise required by law, however a reasonable accommodation may not allow an unvaccinated staff member to work with children in person.

7. This Order shall be effective immediately and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter, or modify this Order pursuant to Section 3.01(d) of the Health Code.

Dated: November 17, 2021

Dave A. Chokshi, M.D., MSc
Commissioner

EXIBIT #27

FORD TO PRODUCE RESPIRATORS, MASKS FOR COVID-19 PROTECTION IN MICHIGAN

FORD IS EXPANDING ITS EFFORTS TO DESIGN AND PRODUCE URGENTLY NEEDED MEDICAL EQUIPMENT AND SUPPLIES.

- Ford, with design and testing consultation from 3M, has developed a new powered air-purifying respirator (PAPR). Production of this PAPR starts Tuesday, April 14 at Ford's Vreeland facility near Flat Rock, Mich., with paid UAW volunteers, with the ability to make 100,000 or more

• Ford, in collaboration with the UAW, is now producing face masks at Ford's Van Dyke Transmission Plant for internal use globally and pursuing certification for medical use

• To help further protect health care workers, Ford is leading efforts to manufacture reusable gowns from airbag materials with supplier Joyson Safety Systems

• Ford is lending its manufacturing support to help Thermo Fisher Scientific quickly expand production of COVID-19 collection kits for patient testing

DEARBORN, Mich., April 13, 2020 – Ford is expanding its efforts to design and produce urgently needed medical equipment and supplies for health care workers, first responders and patients fighting coronavirus.

In addition to the current production of more than 3 million face shields in Plymouth, Mich., Ford-designed powered air-purifying respirator production begins Tuesday, April 14. Ford also is now producing face masks and leading an effort to scale production of reusable gowns for health care workers. Lastly, Ford started providing manufacturing expertise to help scientific instrument provider Thermo Fisher Scientific quickly expand production of COVID-19 collection kits to test for the virus.

"We knew that to play our part helping combat coronavirus, we had to go like hell and join forces with experts like 3M to expand

production of urgently needed medical equipment and supplies," said Jim Baumbick, vice president, Ford Enterprise Product Line Management. "In just three weeks under Project Apollo, we've unleashed our world-class manufacturing, purchasing and design talent to get scrappy and start making personal protection equipment and help increase the availability and production of ventilators."

Ford and 3M Collaboration Leads to New PAPR

Since late March, Ford manufacturing, purchasing and supply chain experts have been embedded at 3M manufacturing facilities to help increase production of urgently needed products.

With this additional help, 3M and Ford were able to increase the output of PAPRs and N95 respirators at 3M's U.S.-based manufacturing facilities.

"3M is dedicated to helping to protect our heroic health care workers and first responders globally, including sharing our scientific expertise to increase supply of needed PPE," said Bernard Cicut, vice president, 3M Personal Safety Division. "We are proud to stand together with Ford in this effort, as they have helped us increase manufacturing of existing 3M PPE products and, together, we have rapidly designed a new PAPR to help protect these heroes."

Ford will start producing an all-new PAPR design to help protect health care professionals on the front lines fighting COVID-19. Rapidly designing components and prototyping in accordance with federal guidelines and with 3M expert support and guidance, Ford teams reduced PAPR development time to less than four weeks.

"By working collaboratively with 3M to quickly combine more than 100 years of Ford manufacturing and engineering expertise with personal protection equipment design and expertise, we're getting much-needed technology into the hands of frontline medical workers to help when they need it most," said Marcy Fisher, Ford director, Global Body Exterior and Interior Engineering.

Approximately 90 paid UAW volunteers will assemble PAPRs at Ford's Vreeland facility near Flat Rock, Mich., with the ability to make 100,000 or more.

The newly designed PAPR includes a hood and face shield to cover health care professionals' heads and shoulders, while a high-efficiency (HEPA) filter system provides a supply of filtered air for up to 8 hours. The air blower system – similar to the fan found in F-150's ventilated seats – is powered by a rechargeable, portable battery, helping keep the respirator in constant use by first-line defenders.

The development team expects the respirator design will meet the pending National Institute for Occupational Safety and Health (NIOSH) limited-use protocol to respond to the COVID-19 public health emergency, with approval anticipated by the end of April.

Pending approval, 3M will distribute the newly designed PAPRs through its U.S. network to help bring these technologies quickly and efficiently to health care workers who urgently need them. 3M and Ford will donate any profits they earn from the sale of the PAPR to COVID-19 related nonprofit organizations.

Face Mask Production

Meanwhile, Ford is now manufacturing face masks for internal use globally and pursuing certification for medical use at its Van Dyke Transmission Plant. Face masks can help slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others.

The CDC is now encouraging all U.S. residents to use masks to curb the spread of the virus.

Ford's global manufacturing and purchasing teams quickly sourced the necessary materials and equipment from its network of equipment manufacturers around the world. Production began earlier this week.

Approximately 30 UAW paid volunteers will start making masks in the plant's ISO Class 8 cleanroom, which is a controlled environment with extremely low levels of pollutants, enabling the safe production of face masks for medical use. Eventually, approximately 80 UAW paid volunteers will make masks as production increases.

"UAW Ford members continue to step up and volunteer to work during this difficult time as we expand at the facility across from Flat Rock to make respirators and at the Van Dyke Transmission Plant to make face masks for medical use," said Gerald Kariem, vice president, UAW Ford Department. "The UAW also continues to work with Ford to follow stringent CDC guidelines and go above and beyond protections for these members who are so proudly volunteering to serve their communities and their nation."

Gown Production

To help further protect health care workers, Ford is leading efforts to manufacture reusable gowns with airbag supplier Joyson Safety Systems. The go-fast project has created re-usable gowns manufactured from material used to make airbags in Ford vehicles.

Production of gowns will reach 75,000 gowns a week by Sunday and scale up to 100,000 gowns for the week of April 19 and beyond. By July 4, Ford-supplier Joyson Safety Systems will cut and sew 1.3 million gowns, which are self-tested to federal standards and are washable up to 50 times.

Ford worked with Beaumont Health in Metro Detroit to quickly design the gown pattern and test for sizing during fit and function trials. More than 5,000 gowns have already been delivered to the hospital.

"The need to protect our medical teams is heightened. Ford's

The need to produce ventilator testing devices and gown production could not come at a better time during this crisis," said David Claeys, president of Beaumont Health hospitals in Dearborn and Farmington Hills. "Our front line health care workers are working around the clock to treat COVID-19 patients and we need the necessary supplies to support them."

Collection Kits for COVID-19 Tests

Ford is helping scale production of collection kits for COVID-19 tests at Thermo Fisher Scientific.

Thermo Fisher's engineering team at the company's site in Lenexa, Kansas, realized their expertise, combined with the manufacturing expertise of Ford's nearby Kansas City Assembly Plant engineering team, could help set up additional collection kit production machinery. The Ford team also helped Thermo Fisher adapt machinery that currently runs glass vials for other products to run plastic vials required in drive-through coronavirus test collection.

"Ford's engineers brought a fresh perspective to production expansion, and together, we'll more than triple the number of collection kits we can deliver each week starting April 20," said John Reuss, senior director, microbiology business for Thermo Fisher. "It's great to see different industries coming together to solve a common problem."

Additional Efforts

"We are doing all we can to expand production and availability of personal protective equipment to help keep the true heroes – medical personnel – and our communities safe in the fight against COVID-19," said Adrian Price, director, Global Core Engineering for Vehicle Manufacturing.

Ford also is continuing to manufacture transparent full-face shields for medical workers. As of April 13, Ford had produced more than 3 million face shields for medical personnel and first responders. Besides the U.S., face shield production also has started globally at Ford facilities in Canada and Thailand and with Ford joint venture partner Mahindra & Mahindra in India.

Work at Rawsonville (Mich.) Components Plant is underway to transform a portion of the plant to manufacture a third-party ventilator, in collaboration with GE Healthcare, with production expected to start the week of April 20. Built by paid UAW volunteers, the goal is to produce 50,000 Model A-E ventilators by July 4 to help COVID-19 patients.

Ventilator pre-production activities are also underway in the U.K., where Ford and an industry consortium are preparing to make ventilators from Penlon. Ford is providing manufacturing engineering capability, project leadership, purchasing support and assembly of the ventilators at its Dagenham engine plant. This production will help meet demand for 15,000 ventilators ordered by the U.K. government.

Additional companies and individuals who are interested in

contributing to this effort can submit their information here at www.fordnewideas.com.

About Ford Motor Company

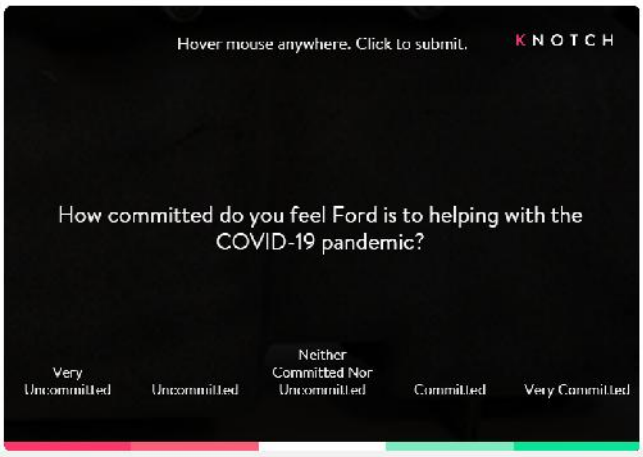
Ford Motor Company is a global company based in Dearborn, Michigan. The company designs, manufactures, markets and services a full line of Ford cars, trucks, SUVs, electrified vehicles and Lincoln luxury vehicles, provides financial services through Ford Motor Credit Company and is pursuing leadership positions in electrification, autonomous vehicles and mobility solutions. Ford employs approximately 190,000 people worldwide. For more information regarding Ford, its products and Ford Motor Credit Company, please visit corporate.ford.com.

About 3M

At 3M, we apply science in collaborative ways to improve lives daily. With $32 billion in sales, our 96,000 employees connect with customers all around the world. Learn more about 3M's creative solutions to the world's problems at www.3M.com or on Twitter @3M or @3MNews

About Thermo Fisher Scientific

Thermo Fisher Scientific Inc. is the world leader in serving science, with annual revenue exceeding $25 billion. Our Mission is to enable our customers to make the world healthier, cleaner and safer. Whether our customers are accelerating life sciences research, solving complex analytical challenges, improving patient diagnostics and therapies or increasing productivity in their laboratories, we are here to support them. Our global team of more than 75,000 colleagues delivers an unrivaled combination of innovative technologies, purchasing convenience and pharmaceutical services through our industry-leading brands, including Thermo Scientific, Applied Biosystems, Invitrogen, Fisher Scientific, Unity Lab Services and Patheon. For more information, please visit www.thermofisher.com.



DISCOVER MORE

More COVID-19 Updates >

You May Also Like

View All Articles >

Back to the top

California Residents

Exercise your rights under the California Consumer Privacy Act here.

Do Not Sell My Personal Information

EXIBIT #5

ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION FOR
CITY EMPLOYEES AND CERTAIN CITY CONTRACTORS

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

WHEREAS, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the "Charter"), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (the "Department") extends; and

WHEREAS, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

WHEREAS, the U.S. Centers for Disease Control and Prevention ("CDC") reports that new variants of COVID-19, identified as "variants of concern" have emerged in the United States, and some of these new variants which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible than earlier variants; and

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and the development of new variants, and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, the Department reports that between January 17 and August 7, 2021, people who were unvaccinated or not fully vaccinated accounted for 96.1% of COVID-19 cases, 96.9% of COVID-19 hospitalizations, and 97.3% of COVID-19 deaths in New York City; and

WHEREAS, a study by Yale University demonstrated that the Department's vaccination campaign was estimated to have prevented about 250,000 COVID-19 cases, 44,000 hospitalizations, and 8,300 deaths from COVID-19 infection since the start of vaccination through July 1, 2021, and by information and belief, the number of prevented cases, hospitalizations, and death has risen since then; and

WHEREAS, on August 16, 2021, Mayor de Blasio issued Emergency Executive Order No. 225, the "Key to NYC," requiring that patrons and employees of establishments providing indoor entertainment, dining, and gyms and fitness centers must show proof that they have received at least one dose of an approved COVID-19 vaccine, and such Order, as amended, is still in effect; and

WHEREAS, on August 24, 2021, I issued an Order requiring that Department of Education employees, contractors, and visitors provide proof of COVID-19 vaccination before entering a DOE building or school setting, and such Order was re-issued on September 12 and

15, 2021, and subsequently amended on September 28, 2021, and such Orders and amendment were ratified by the New York City Board of Health on September 17, 2021 and October 18, 2021; and

WHEREAS, on August 26, 2021, the New York State Department of Health adopted emergency regulations requiring staff of inpatient hospitals and nursing homes to receive the first dose of a COVID-19 vaccine by September 27, 2021, and staff of diagnostic and treatment centers, hospices, home care and adult care facilities to receive the first dose of a COVID-19 vaccine by October 7, 2021; and

WHEREAS, on August 31, 2021, Mayor de Blasio issued Executive Order No. 78, requiring that, beginning September 13, 2021, City employees and covered employees of City contractors be vaccinated against COVID-19 or submit on a weekly basis proof of a negative COVID-19 PCR diagnostic test; and

WHEREAS, on September 9, 2021 President Biden issued an Executive Order stating that "It is essential that Federal employees take all available steps to protect themselves and avoid spreading COVID-19 to their co-workers and members of the public," and ordering each federal agency to "implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law"; and

WHEREAS, on September 12, 2021, I issued an Order requiring that staff of early childhood programs or services provided under contract with the Department of Education or the Department of Youth and Community Development provide proof of COVID-19 vaccination; and

WHEREAS, Section 17-104 of the Administrative Code of the City of New York directs the Department to adopt prompt and effective measures to prevent the communication of infectious diseases such as COVID-19, and in accordance with Section 17-109(b), the Department may adopt vaccination measures to effectively prevent the spread of communicable diseases; and

WHEREAS, City employees and City contractors provide services to all New Yorkers that are critical to the health, safety, and well-being of City residents, and the City should take reasonable measures to reduce the transmission of COVID-19 when providing such services; and

WHEREAS, a system of vaccination for individuals providing City services and working in City offices will potentially save lives, protect public health, and promote public safety; and

WHEREAS, there is a staff shortage at Department of Corrections ("DOC") facilities, and in consideration of potential effects on the health and safety of inmates in such facilities, and of the benefit to public health and employee health of a fully vaccinated correctional staff, it is necessary that the requirements of this Order for DOC uniformed personnel not assigned to posts in healthcare settings be delayed; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such Section;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is

necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and order that:

1. My Order of August 10, 2021, relating to a vaccination or testing requirement for staff in City operated or contracted residential and congregate settings, shall be **RESCINDED** as of November 1, 2021. Such staff are subject to the requirements of this Order.

2. No later than 5pm on October 29, 2021, all City employees, except those employees described in Paragraph 5, must provide proof to the agency or office where they work that:

    a. they have been fully vaccinated against COVID-19; or
    b. they have received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or
    c. they have received the first dose of a two-dose COVID-19 vaccine

    Any employee who received only the first dose of a two-dose vaccine at the time they provided the proof described in this Paragraph shall, within 45 days after receipt of the first dose, provide proof that they have received the second dose of vaccine.

3. Any City employee who has not provided the proof described in Paragraph 2 must be excluded from the premises at which they work beginning on November 1, 2021.

4. No later than 5pm on October 29, 2021, City agencies that contract for human services contracts must take all necessary actions to require that those human services contractors require their covered employees to provide proof that:

    a. they have been fully vaccinated against COVID-19; or
    b. they have received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or
    c. they have received the first dose of a two-dose COVID-19 vaccine.

    Any covered employee of a human service contractor who received only the first dose of a two-dose vaccine at the time they provided the proof described in this Paragraph shall, within 45 days after receipt of the first dose, provide proof that they have received the second dose of vaccine.

    All such contractors shall submit a certification to their contracting agency confirming that they are requiring their covered employees to provide such proof. If contractors are non-compliant, the contracting City agencies may exercise any rights they may have under their contract.

5. Notwithstanding Paragraphs 3 and 4 of this Order, until November 30, 2021, the provisions of this Order shall not apply to uniformed Department of Corrections ("DOC") employees, including staff serving in Warden and Chief titles, unless such uniformed employee is assigned for any time to any of the following locations: Bellevue Hospital; Elmhurst Hospital; the DOC

infirmary in North Infirmary Command; the DOC West Facility; or any clinic staffed by Correctional Health Services.

Uniformed employees not assigned to such locations, to whom this Order does not apply until November 30, 2021, must, until such date, either:

a. Provide DOC with proof that:
   i. they have been fully vaccinated against COVID-19; or
   ii. they have received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or
   iii. they have received the first dose of a two-dose COVID-19 vaccine, provided that they must additionally provide proof that they have received the second dose of vaccine within 45 days after receipt of the first dose; or

b. On a weekly basis until the employee submits the proof described in this Paragraph, provide DOC with proof of a negative COVID-19 PCR diagnostic test (not an antibody test).

6. For the purposes of this Order:

"City employee" means a full- or part-time employee, intern, or volunteer of a New York City agency.

"Contract" means a contract awarded by the City, and any subcontract under such a contract, for work: (i) to be performed within the City of New York; and (ii) where employees can be expected to physically interact with City employees or members of the public in the course of performing work under the contract.

"Contractor" means a person or entity that has a City contract, including a subcontract as described in the definition of "contract."

"Covered employee" means a person: (i) employed by a contractor or subcontractor holding a contract; (ii) whose salary is paid in whole or in part from funds provided under a City contract; and (iii) who performs any part of the work under the contract within the City of New York. However, a person whose work under the contract does not include physical interaction with City employees or members of the public shall not be deemed to be a covered employee.

"Fully vaccinated" means at least two weeks have passed after an individual received a single dose of a COVID-19 vaccine that only requires one dose, or the second dose of a two-dose series of a COVID-19 vaccine as approved or authorized for use by the Food and Drug Administration or World Health Organization.

"Human services contract" means social services contracted by an agency on behalf of third-party clients including but not limited to day care, foster care, home care, health or medical services, housing and shelter assistance, preventive services, youth services, the operation of

senior centers, employment training and assistance, vocational and educational programs, legal services and recreation programs.

7. Each City agency shall send each of its human services contractors notice that covered employees of such contractors must comply with the requirement of Paragraph 4 of this Order and request a response from each such contractor, as soon as possible, with regard to the contractor's intent to follow this Order.

8. Nothing in this Order shall be construed to prohibit any reasonable accommodation otherwise required by law.

9. This Order shall not apply to individuals who already are subject to another Order of the Commissioner of Health and Mental Hygiene, Board of Health, the Mayor, or a State or federal entity that requires them to provide proof of full vaccination and have been granted a reasonable accommodation to such requirement.

10. This Order shall not apply to per diem poll workers hired by the New York City Board of Elections to conduct the election scheduled for November 2, 2021.

11. Subject to the authority of the Board of Health to continue, rescind, alter or modify this Order pursuant to Section 3.01(d) of the Health Code, this Order shall be effective immediately and remain in effect until rescinded, except that Paragraph 5 of this Order will be deemed repealed on December 1, 2021.

Dated: October 20, 2021

Dave A. Chokshi, M.D., MSc
Commissioner

EXIBIT #6

SUPPLEMENTAL ORDER
OF THE COMMISSIONER OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION FOR CITY EMPLOYEES AND
EMPLOYEES OF CERTAIN CITY CONTRACTORS

WHEREAS, on October 20, 2021, I issued an Order requiring city employees and human services contractors of city agencies provide proof of COVID-19 vaccination no later than October 29, 2021; and

WHEREAS, it is necessary that the requirements of that Order be extended to include all contractors working at locations where human services are provided and all employees of contractors who regularly work alongside City employees at locations controlled by the City of New York; and

WHEREAS, to ensure an orderly election, the requirements of that Order for employees of the Board of Elections must be delayed; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such Section;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and order that:

1. The requirements of my Order of October 20, 2021, relating to a vaccination requirement for City employees and human services contractors of City agencies, are continued and incorporated herein.

2. City agencies must take all necessary actions to require that their contractors (not covered by my Order of October 20, 2021) ensure their covered employees who provide services in locations where human services are provided and covered employees of any other contractors whose work responsibilities require them to regularly work alongside City employees at a location controlled by the City of New York, provide proof no later than 5pm on November 8, 2021, that:

    a. they have been fully vaccinated against COVID-19; or
    b. they have received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or
    c. they have received the first dose of a two-dose COVID-19 vaccine.

    Any covered employee of such a contractor who received only the first dose of a two-dose vaccine at the time they provided the proof described in this Paragraph shall, within 45 days after receipt of the first dose, provide proof that they have received the second dose of vaccine.

All such contractors shall submit a certification to their contracting agency confirming that they are requiring their covered employees to provide such proof. If contractors are non-compliant, the contracting City agencies may exercise any rights they may have under their contract.

3. Notwithstanding Paragraph 2 of this Order and Paragraph 3 of my Order of October 20, 2021, the vaccination requirements of such Orders shall not apply to any Board of Elections ("BOE") employee or any contractor of the BOE until 5pm on November 30, 2021.

   Until November 30, 2021, BOE employees must provide to BOE, and BOE must take any necessary action to require its contractors to require that their covered employees provide to their employer, either:

   a. Proof that:
      i. they have been fully vaccinated against COVID-19; or
      ii. they have received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or
      iii. they have received the first dose of a two-dose COVID-19 vaccine, provided that they must additionally provide proof that they have received the second dose of vaccine within 45 days after receipt of the first dose; or

   b. On a weekly basis until the employee submits the proof described in this Paragraph, proof of a negative COVID-19 PCR diagnostic test (not an antibody test).

4. For the purposes of this Order:

   "City employee" means a full- or part-time employee, intern, or volunteer of a New York City agency.

   "Contract" means a contract awarded by the City, and any subcontract under such a contract, for work: (i) to be performed within the City of New York; and (ii) where employees can be expected to physically interact with City employees or members of the public in the course of performing work under the contract. "Contractor" means a person or entity that has a City contract, including a subcontract as described in the definition of "contract."

   "Covered employee" means a person: (i) employed by a contractor or subcontractor holding a contract or subcontract; (ii) whose salary is paid in whole or in part from funds provided under a City contract; and (iii) who performs any part of the work under the contract within the City of New York. However, a person whose work under the contract does not include physical interaction with City employees or members of the public shall not be deemed to be a covered employee.

   "Fully vaccinated" means at least two weeks have passed after an individual received a single dose of a COVID-19 vaccine that only requires one dose, or the second dose of a

two-dose series of a COVID-19 vaccine as approved or authorized for use by the Food and Drug Administration or World Health Organization.

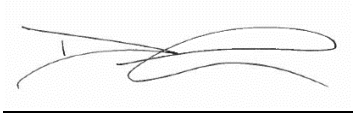
"Human services contract" means social services contracted by an agency on behalf of third-party clients including but not limited to day care, foster care, home care, health or medical services, housing and shelter assistance, preventive services, youth services, the operation of senior centers, employment training and assistance, vocational and educational programs, legal services and recreation programs.

5. Each City agency shall send each of its contractors to whom Paragraph 2 of this Order applies, notice that such covered employees must comply with the requirement of Paragraph 2 of this Order and request a response from each such contractor, as soon as possible, with regard to the contractor's intent to follow this Order.

6. Nothing in this Order shall be construed to prohibit any reasonable accommodation otherwise required by law.

7. Subject to the authority of the Board of Health to continue, rescind, alter or modify this Order pursuant to Section 3.01(d) of the Health Code, this Order shall be effective immediately and remain in effect until rescinded.

Dated: October 31, 2021



Dave A. Chokshi, M.D., MSc
Commissioner

EXIBIT #15

Variances in Effect & Interim Orders

Construction

Number	Grantee	Effective Date	Standard(s)	Variance Type	Federal Register Reference	Effective Locations (States)	Brief Description
1	Kiewit Power Constructors Co. et al.; (Avalotis Corp.; Bowen Engineering Corporation (merged with Mid-Atlantic Boiler & Chimney, Inc. (formerly Alberici Mid-Atlantic, LLC)); Commonwealth Dynamics, Inc.; Gibraltar Chimney International, LLC; Hamon Custodis, Inc. (formerly Custodis Construction Co., Inc., then Custodis Cuttrell, Inc.); Hoffmann, Inc.; Industrial Access, Inc; International Chimney Corporation;	28-Sep-2013	1926.452 (o)(3); 1926.552 (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16)	Permanent	OSHA-2012-0015	All Fed OSHA States Plus:AK, AZ, IN, MD, MN, NV, NM, NC, OR, PR, TN, VA, VT, WY	Allows employers to use a rope-guided hoist system during inside or outside chimney construction to raise or lower workers between the bottom landing of a chimney and an elevated work location on the inside or outside surface of the chimney using personnel cages, personnel platforms, and boatswain's chairs.

	Karrena International Chimney; Kiewit Power Constructors Co.; Marietta Silos, LLC; Matrix SME, Inc. (formerly Matrix Service Industrial Contractors, Inc.); NAES Power Contractors (formerly American Boiler and Chimney Company); Pullman Power, LLC (formerly M. W. Kellogg Co., then Pullman Power Products Corporation); R and P Industrial Chimney Co., Inc.; T.E. Ibberson; & TIC-The Industrial Company)						
2	Salini-Impregilo Healy Joint Venture Northeast Boundary Tunnel Project	11-May-2020	1926.803(f)(1); 1926.803(g)(1)(iii); and 1926.803(g)(1)(xvii)	Permanent	OSHA-2018-0013	DC	Allows employers to use alternate means of protection from the provisions of OSHA standards that regulate work in compressed-air environments.

General Industry

Number	Grantee	Effective Date	Standard(s)	Variance Type	Federal Register Reference	Effective Locations (States)	Brief Description
1	3M Co. (formerly Minnesota Mining & Manufacturing Co.) 3M Center	10-Mar-1978	1910.106(d)(5)(vi)(b)	Permanent	43:9887-88, 3/10/78	SD, MO, TX	Allows employer to store flammable and combustible liquids on racks to the heights and under

	St. Paul, MN 55144						conditions specified in the order.
2	Clark Grave Vault Company 375 East Fifth Avenue Columbus, OH 43201	4-Oct-1977	1910.22(c); 1910.23(c)(3)	Permanent	42:54028, 10/4/77	OH	Allows employer to continue its operation using galvanizing tank having ledges 31 1/2" wide and sides 30" high in lieu of guardrail and toeboard required by standards, provided special conditions specified are followed.
3	Frontier Hot-Dip Galvanizing, Inc. 1740 Elmwood Avenue Buffalo, NY 14207	14-Oct-1977	1910.22(c); 1910.23(c)(3)	Permanent	42:55291, 10/14/77	NY	Allows employer to continue its operation using galvanizing tank having ledges (including the protective angle) 24" wide and sides 30" high in lieu of guardrail and toeboard required by standards, provided special conditions specified are followed.
4	Gestamp West Virginia	2-Mar-2021	1910.147(d)(3)	Permanent	OSHA-2019-0004	WV	Allows employer to use a modified lockout/tagout system for laser cutting cell.
5	Keystone Steel and Wire (KSW) Company 7000 S. W. Adams Street Peoria, IL 61641	13-Oct-2010	1910.1025(h)(2)(i); 1910.1018(k)(2)	Grant of Permanent Variance	OSHA-2010-0011	IL	Allows employer to use compressed air to clean floors and other surfaces where lead and arsenic particulates accumulate.
6	Metalplate Galvanizing, Inc. (formerly	28-Dec-1976	1910.22(c); 1910.23(c)(3)	Permanent	41:56410-11, 12/28/76	Atlanta, GA	Allows employer to continue operations while

	Metalplate & Coatings, Inc.) 500 Selit Drive, S. W. Atlanta, GA 30336						using its galvanizing tank having sides 30" high and ledges 32" wide in lieu of guardrail and toeboard required by standards, provided special conditions specified in the order are followed.
7	Newport News Shipbuilding 4101 Washington Avenue Newport News, VA 23607	4-Aug-2015	1915.116(i), (j) & (q)	Permanent	81 FR 51499, 8/4/16	VA	Allows employer to work under a suspended load during modular ship construction and structural repair provided special conditions specified within the order are followed.
8	Nucor Steel Connecticut Incorporated (NSCI) Address: N/A CT	8-April-2016	1910.147(c)(4)(i)	Permanent	81 FR 20680, 4/8/16	CT	Allows employer to use a modified lockout/tagout system for its roll mills.
9	Jardon and Howard Technologies, Incorporated	15-May-2019	1910.330(d)(3),(d)(4); 1910.423(b)(2), (c)(1), (c)(3); 1910.424(b)(2)	Permanent	84 FR 21822, 5/15/19	NC, SC	Allows employer to conduct diving in accordance the NOAA Diving Program (NDP), as well as use Buoyancy Compensator Devices (BCDs) in accordance with NOAA Alternative Diving Standards previously approved by OSHA.
10	STP Nuclear	28-April 2021	1910.146(b)	Permanent	86 FR 22458, 4/28/21	TX	Allows employer to use a modified energy isolation system

							to perform condenser water box maintenance activities.

Completed Variance Projects

ımber	Docket ID	Company Name	Variance Type	Standard from Which Variance Requested	Date of Grant of Permanent Variance	State(s)	Description of Alternative Means of Compliance	Date of Project Completion
	OSHA-2019-0008	Ballard Marine Construction	Interim Order	1926.803(f)(1); 1926.803(g)(1)(iii); and 1926.803(g)(1)(xvii)	31-January-2021	NY	Allows employers to use alternate means of protection from the provisions of OSHA standards that regulate work in compressed-air environments.	31-January-2021
	OSHA-2014-0011	Impregilo Healy Parsons Joint Venture (IHP JV) Anacostia River Tunnel Project	Permanent	1926.803(e)(5); 1926.803(f)(1); 1926.803(g)(1)(iii); and 1926.803(g)(1)(xvii)	20-Aug-2015	DC	Allows employers to use alternate means of protection from the provisions of OSHA standards that regulate work in compressed-air environments.	15-Feb-2018
	OSHA-	Traylor	Permanent	1926.803(e)	11-Mar-	All	Allows	25-July-

	2012-0035	Bros., Inc.		(5); 1926.803(f)(1); 1926.803(g)(1)(iii); and 1926.803(g)(1)(xvii)	2016	States	employers to use alternate means of protection from the provisions of OSHA standards that regulate work in compressed-air environments.	2016

Denied and Withdrawn Variance Applications for 1995-2022

Company Name	Variance Type	Standard from Which Variance Requested	Date of Denial or Withdrawal	State(s)	Description of Alternative Means of Compliance	Reason Denied or Withdrawn
United States Postal Service	Temporary	29 CFR 1910.501(d)	2/01/2022	Nation-wide	Allows employer to have an extension of time to comply with 29 CFR 1910.501(d). This standard has been withdrawn.	Denied – variance no longer necessary
J.H.Findorff	Permanent	29 CFR 1926.1051(a)(1)and29 CFR 1926.1052(c)(2)	10/7/2021	WI	Use of Escalib Mills (Safe Erection and Dismantling) stairs.	Withdrawn – Variance not necessary
TMS International	Permanent	29 CFR 1926.602(c)(1)(ii) and 29 CFR 1926.600(a)(3)(ii)	4/15/2021	AL, AZ, AR, GA, IL	Use of a manual override system in a hot pit loader.	Withdrawn – Variance not necessary
Building Zone Industries	Permanent	29 CFR 1926.757(a)(1)(i) and 29 CFR 1926.757(a)	2/5/2021	CA&TX	Use of technology to assemble roof deck sections without having	Denied – Not as protective as standard

		(1)(ii)			to stabilize steel joints to prevent rotation during erection.	
Gensler	Permanent	29 CFR 1910.23(d)(4)	6/18/2020	TX	Use of ladders, platform, guardrails and personal fall protection to access and egress roofs.	Denied– Variance not necessary. In compliance with standard
Federal Express	Permanent	29 CFR 1910.28(b)(1)	6/4/2020	Nationwide	Use of an alternative fall protection plan in lieu of complying with the standard	Denied – Not as protective as standard
Tindall Corporation	Permanent	29 CFR 1910.28(b)(1)	10/11/2018	IL	Use of an alternative fall protection plan in lieu of complying with the standard	Denied – Not as protective as standard
Three Rivers Crane, Inc.	Permanent	29 CFR 1910.179(b)(6)(i)	7/19/2018	PA	Exemption from crane clearance requirements.	Denied – Not as protective as standard
Printing Industries of America	Permanent	29 CFR 1910.1200(f)(6)	4/16/2018	PA	Use of color coding instead of labeling to identify Hazardous Chemicals used in the workplace	Denied- Not as protective as standard
Rosenwach Tank Co. LLC	Permanent	29 CFR 1926, Subpart M	12/07/2017	NY	Use of an unpatented bracket system in lieu of Fall Protection measures outlined in the standard.	Denied- Not as protective as standard
Outfront Media, LLC (formerly CBS Outdoor Systems, Inc., then Gannett Outdoor Companies, then Outdoor Systems, Inc.)	Permanent	1910.27(d)(l)(ii), (d)(2), and (d)(5)	11/18/2017	NJ, CO, TX, MO, CT, IL, AZ	Allows employer to use ladder-safety devices in lieu of safety cages to assure the safety of employees climbing fixed	Denied – variance no longer necessary

					ladders at heights over 65 feet from grade, or when the length of a fixed ladder climb is over 50 feet, whichever is less.	
Precast/Prestressed Concrete Institute	Permanent	29 CFR 1910.28(b)(1)	8/11/2017	Nationwide	Exemption from requirement for use of guardrail systems, safety nets or personal fall protection systems while attaching or detaching rigging devices	Withdrawn – Variance not necessary
International Association of Drilling Contractors & Others	Interim Order	1910.27(b)(1)(i), (ii), (iii), and (c)(4)	11/18/2016	All States	Allows specified employers to use ladder safety devices similar to those mentioned in 1910.27(d)(5) in lieu of the required dimensions of rungs, cleats, and clearances of fixed ladders during the operating or maneuvering of specific derricks.	Denied – variance no longer necessary
J. W. Fowler Co.	Permanent	1926.803	12/4/2015	ND	Use of compressed air environments at pressures exceeding 50 pounds per square inch.	Denied – variance no longer necessary
Wahlco - D. W. Tool, Inc.	Permanent	General-duty clause; Section 5(a)(1) of the Act	10/5/2015	MO	Exemption from general-duty clause.	Denied – no variances from the general-duty clause
Rosenwach Tank Co. LLC	Permanent	1926.501(b)(1)	6/4/2015	NY	Use of ineffective worker training	Denied – not as protective as standard

					instead of the measures required by the standard to protect workers from falling off unprotected sides and edges. Claims of compliance infeasibility.	
Avantor Performance Materials, Inc.	Temporary	1910.1200; Appendix C, C.2.3.1	4/14/2015	PA, NJ,KY	Use alternative workplace labeling not meeting requirements beyond the new standard's effective date of June1,2015to December 1, 2015.	Denied – not as protective as standard
Devin Kieschnick (DK) Farms	Permanent	1910.142(b)(2)	3/10/2015	TX	Use room in a temporary labor camp for sleeping when the room's ceiling height is lower than the minimum height specified by the standard.	Denied – not as protective as standard and exemption requested
Transfield Services	Permanent	1910.134	12/15/2014	TX,CA	Use SCBA/SARs where equipment manufacturer issued a stop support notice.	Withdrawn – variance not necessary
Union Pacific Railroad (UPRR)	Permanent	1910.110(b)(6)(ii)	12/8/2014	IL	Use LPG containers located closer to an important building than the specified distance minimum distance (25 feet).	Denied – not as protective as standard.
Upland Industries, Inc., dba Eligies Bronze	Permanent	1910.215(a)(2) and 1910.215(a)(4)	9/8/2014	MO	Use safety guards on abrasive wheels and work rests on	Denied – unresolved citation

					grinding machinery.	
Bennett Construction, Inc	Permanent	1926.1419(a)(2)	8/19/2014	OK	Use of a combined spotter and signal person instead of the required dedicated signal person when the crane is traveling and the view in the direction of travel is obstructed.	Denied – not as protective as standard and exemption requested
Green Barn Farms, II	Permanent	1910.142(a)(2)	7/24/2014	WI	Use worker camp area located closer to livestock facility than standard permits.	Withdrawn – variance not necessary
ITW Food Equipment Group LLC; dba Hobart Service	Permanent	1910.23(c)(1) and 1926.501(b)(1)	6/11/2014	AK,AZ, CA, CT, HI, IA. IL, IN, KY, MD, MI, MN, NC, NJ, NM, NV, NY, OR, PR, SC, TN, UT, VA, VI, VT, WA, WY	Use of work instructions and worker training instead of the measures required by the standard to protect workers from falling off unprotected sides and edges.	Denied – not as protective as standard and exemption requested
Ned Stevens	Permanent	1910.23(c)(1)	5/6/2014	CT, IL, MA, MD, NC, NJ, NY, PA, SC, TX,VA	Use of a fall protection plan instead of the required guardrails and toeboards.	Denied – unresolved citation
Southland Contracting	Permanent	1926.602(a)(9)(ii)	4/16/2014	HI	Use of a visual backup alarm on earthmoving or compacting equipment instead of the required audible alarm.	Withdrawn – site located solely in state-plan state
Johnstown Wire Technologies	Permanent	1910.1025(d)(6)(iii)	3/26/2014	NY	Use of alternate frequency of	Denied – exemption requested

					monitoring worker lead exposures.	
Puerto Rico Harbor Diving Services	Permanent	1910.410(c), 1910.424(c)(1), & 1910.424(c)(2)	3/27/2014	PR	Use of reduced number of SCUBA dive team members from the required minimum of 3 to 2.	Denied – exemption requested
Tonawanda Coke Corporation	Permanent	1910.1029(f)(3)(iii)(A)	8/22/2013	NY	Use of alternate work practice controls of shoveling spilled coke and coal back into the heated coke oven instead of immediate quenching and disposal.	Denied – not as protective as standard
McLean Contracting Co.	Permanent	1926.1041(e)(10)	6/4/2013	DC, DE, MD, NC, SC, VA	Use of PPE instead of overhead protection on personnel platforms deployed over bodies of water.	Denied – not as protective as standard
Sunrise Senior Living, Inc.	Permanent	1910.151(c)	4/10/2013	CO,CT, DC, DE, FL, GA, IL, KS, LA, MA, ME, MO, NE, NJ, NY, OH, PA, TX	Use of enclosed laudry product dispenser systems as an alternative to the required emergency eyewash and shower facilities.	Denied - Standard or Interpretation already exists
Key Energy Services	Permanent	1910.23(c)(1)	1/4/2013	AK,AZ, CA, KY, MD, MI, NM, NC, TN, UT, VA,WY	Use of a buffer zone as fall protection instead of the required railing to guard open sided platforms 4 feet or more above adjacet surfaces.	Denied – not as protective as standard

U.S. Postal Service	Permanent	1910.333(a)(1) and 1910.333(a)(2)	12/19/2012	All Fed OSHA & State-Plan States	Use of light-emitting diodes to verify deenergization of circuits instead of using disconnects as required.	Denied – not as protective as standard
The Scotts Company, LLC	Permanent	1910.178(n)(4)	9/12/2012	AL,AZ, CA, CO, CN, FL, GA, IA, IL, IN, KY, LA, MI, MS, MO,OH, PA, SC, SD, TX, VA,WI	Use forklifts by driving up inclines with the load pointed forward.	Denied - Standard or Interpretation already exists
T & T Fertilizer	Permanent	1910.27(d)(2)	7/13/2012	IN	Use an 85 feet high fixed ladder on a fertilizer leg with landing platforms that are not offset.	Denied – site located solely in state-plan state
U.S. Pipe and Foundry Company	Permanent	1910.23(c)(1) and 1910.23(e)(1)	2/16/2012	AL	Use a 34-inch guardrail next to a metal casting trough, instead of the 42-inch guardrail required.	Denied - Standard or Interpretation already exists
GTECH Corp.	Permanent	1926.501(b)(1)	1/3/2012	AZ,CA, FL, GA, KS, KY, MI, MN, MO, NE, NJ, NY, NC,OR, RI, SD, TX, VA, WA,WV, WI	Use a warning line and safety monitoring system instead of the fall protection measures required.	Denied – not as protective as standard
Timothy Raymond	Permanent	1926.1400(a) & (b); 1926.1431(a) & (b); 1926.1431(h)(1)&(2)	1/3/2012	All Fed OSHA & State-Plan States	Use new product design for truck crane-mounted personnel platform that is exempted from employee hoisting and trial lift	Denied – application inappropriately addresses request for product design approval.

					requirements.	
Cedar Fair, L. P.	Permanent	1910.28; 1910.29 & 1910.32	12/2/2011	CA, MI, MN, MO, NC,OH, PA, VA	Use of flexible structural barriers instead of guardrails for fall protection for workers on platforms performing maintenance work on roller coasters.	Denied – application inappropriately addresses proposed standard.
NSS Construction, Inc.	Permanent	1926.602	10/27/2011	MI	Use earthmoving equipment with rollover protective structures (ROPS) removed.	Denied – site located solely in state-plan state
National Chimney and Stack, Inc.	Permanent	1926.452(0) & 1926.552(c)	9/29/2011	All Fed OSHA& State-Plan States	Use a rope-guided hoist system, personnel platforms, and boatswain's chairs during chimney construction to transport workers to elevated work locations.	Denied – Standard or Interpretation already exists
Green Barn Farms	Permanent	1910.142(a)(2)	8/17/2011	WI	Use worker camp area located closer to livestock facility than standard permits.	Denied – not as protective as standard
Industrial Access, Inc.	Permanent	1926.452(0) & 1926.552(c)	8/4/2011	All Fed OSHA& State-Plan States	Use a rope-guided hoist system, personnel platforms, and boatswain's chairs during chimney construction to transport workers to elevated work locations.	Denied – Standard or Interpretation already exists

Eagle Worker's Compensation Trust	Permanent	1904.3	4/28/2011	PA	Use of alternate workplace injury illness recordkeeping process.	Denied – not as protective as standard
SL Chase Welding and Fabricating, Inc.	Permanent	1926.300(a)	12/8/2010	MA, NH, VT	Use hand held power grinder with the manufacturer's guard removed.	Denied – not as protective as standard
Container Research Corp.	Permanent	1910.1026(c)	10/18/2010	PA	Use the aerospace industry exposure limit for chromium of 25 ug/m3 specified by 1910.1026(f)(1)(ii) instead of the 5 ug/m3 PEL required by standard.	Denied – not as protective as standard
Skanska USA Civil Southeast, Inc	Permanent	1926.302(b)(7)	9/20/2010	AL, DC, DE, GA, FL, KY, LA, MD, MS, NC, SC, TN, VA,WV	Use high-pressure compressed air and blowpipe to remove loose material from sections of precast concrete without installation of the required safety device.	Denied – not as protective as standard
Morrow Equipment Co., LLC	Permanent	1926.550	9/1/2010	CA, CO, FL, GA, HI, IL, NY, NC, TX, VA,WA, WI	Use slings and shackles that have a positive-locking mechanism instead of using a hook supplied by the crane manufacturer as required by standard.	Withdrawn – variance not necessary
Bath Iron Works, NASSCO, & Atl. Marine Holding Co.	Permanent	1915.53(d)(1)	8/18/2010	AL, CA, FL, MA, ME, PA	Reduce the required stripping distance for toxic coating from 4 inches to 2 inches	Denied – not as protective as standard

					during application of heat (hot work).	
Kingworks Consulting	Permanent	1926.755(a)(1)	4/16/2010	AZ,CA, NV, NM, TX,WA	When erecting steel columns, use two anchorage bolts instead of the minimum of four bolts specified by standard.	Denied – not as protective as standard
R. Bratti Associates, Inc.	Permanent	1926.303(d); 1926.702(i)(1) & (i)(2)	4/7/2010	DC, MD, VA	Use a hand-held masonry skill saw with the adjustable lower portion of its guard disabled by wedging and securing it under the fixed top portion of the guard.	Denied – exemption requested
Amsted Rail Co.	Temporary	1910.179(j)(3)	1/28/2010	IL	Exemption from the yearly crane-inspection requirement while the plant was shut down for a month.	Denied – exemption requested
Midwest Steel Inc.	Permanent	1926.453(b)(2)(iv); 1926.454(c)(3)	1/14/2010	AL, FL, IN, MI	To reach elevated job sites, have workers stand on scaffold planks secured to the top of the intermediate rail (mid rail) of the aerial work platform (basket) attached to an aerial lift (articulating boom lift).	Denied – not as protective as standard
American Suncraft Construction Co.	Permanent	1926.0062(d)(1), (d)(9), (n)(1),&(o)	12/9/2009	AZ,AR, CA, CT, HI, IN, IA, KY, MD, MI, MN, NV, NJ	Exemption from worker-exposure monitoring requirement.	Denied – exemption requested

				NM, NY, NC, OR, PR, SC, TN, UT, VT, VI, VA, WY		
440 South Occidental, Inc.	Temporary	N/A	8/19/2009	CA	Install a main lift elevator in a building exceeding 65 ft in height.	Withdrawn – site located solely in state-plan state
Central Transport, Inc.	Permanent	N/A	4/7/2009	AL, AZ, AR, CA, CO, CT, DE, FL, GA, IL, IN, IA, KS, LA, ME, MD, MA, MN, MS, MO, NE, NV, NH, NJ, NC, NY, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI	Exemption from requiring workers to use seat belts while riding a battery-powered fork lift.	Denied – exemption requested
John E. Green Co.	Permanent	1926.453(b)(2)(iv)	3/30/2009	OH	Insert a plank that spans the entire basket in an aerial lift to raise employees to the elevation needed to perform work.	Denied – not as protective as standard
"A" Water Tight Roofing & Siding Co. LLC	Permanent	1926.451(g)(1)(i)	3/19/2009	All states	Use a handrail system that attaches to a ladder-jack scaffold instead of the personnel fall-arrest system required by standard.	Denied – not as protective as standard
Rockwell Automation	Permanent	1910.147(b) & (d)(6)	2/9/2009	CA, CO, GA, IL, IN, IA, MA, MI, MN, MO,	Use a remote lock-out system for the controlled shut	Withdrawn – application incomplete

				NH, NJ, NY, NC, OH, PI, TN, TX, VA,WI	down or a system prior to removal of the hazardous energy.	
Newport News Shipbuilding and Dry Dock Co.	Temporary	1910.304 (b)(3)(ii)(B) & (b)(3)(ii)(C)	1/14/2009	CA, VA	Need additional time to comply with standards.	Withdrawn – application incomplete
SAPA Profiles, Inc.	Not specified	OAR 437-002-0228(8) (state standard)	11/17/2008	OR	Exemption from installing safety latches on hooks used to hoist dies and die bolsters from billet ovens.	Withdrawn – variance not necessary
Johnson Controls, Inc. UPG - Norman Plant	Permanent	1910.133(a)(5)	11/7/2008	OK	Use eye filter lenses of 2.0 or 2.5 shade because workers have difficulty seeing work while using higher level filters.	Denied – not as protective as standard
National Grid - Safety and Health Services	Permanent	1926.1101	10/28/2008	MA	Use filtering facepiece respirators for employees while performing Class III asbestos work.	Denied – not as protective as standard
Williams Brothers Construction, Inc.	Permanent	1926.550(g)(4)(iii)(C)	9/19/2008	IL	Use a personnel platform to transport debris and other work materials without having personnel on the platform.	Denied – not as protective as standard
Medical Optics	Permanent	1910.212(a)(1); 1910.215(a)(1) & (a)(4)	8/13/2008	FL	Use face shields and shelving to prevent objects projected from drills presses and grinding machines from striking employees.	Denied – not as protective as standard
Quality Saw & Seal,	Permanent	1910.244(b)	8/13/2008	IL	Have a	Denied – not

Inc.					dedicated employee operate the valve of the cleaning nozzle instead of having the valve controlled manually by the employee controlling the nozzle.	as protective as standard
Liquid Engineering Corp.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	MT	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
McCall Brothers Diving, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	SC	Use the decompression procedures specified for recreational diving instructors and diving guides by standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Muldoon Marine Services, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	CA	Use the decompression procedures specified for recreational	Withdrawn – application incomplete

					diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	
Pro-Dive, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	IL	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
R. Christopher Goodwin & Associates, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	FL, LA	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Associated Underwater	Permanent	1910.423(b)(2) & (c)(1)	6/24/2008	WA	Use the decompression	Withdrawn – application

Services, Inc.		(ii); 1910.426(b)(1)			procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Incomplete
Madcon Corp.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	LA	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Parker Diving Service, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	CA	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete

Appledore Engineering, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	NH	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Bowman Diving Corp.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	FL	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Epic Companies	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	LA,TX	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving	Withdrawn – application incomplete

					operations.	
M&N Engineering and Diving Services, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	MD	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Divecon Services LP	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	CA	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
M.E.I. Yacht Management	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	WI	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the	Withdrawn – application incomplete

					standard for commercial diving operations.	
J.F. White Contracting Co.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	MA	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Globe Divers & Marine Contractors	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	LA	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Underwater Consultants International, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	NY, MP	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the	Withdrawn – application incomplete

					dive site as required by the standard for commercial diving operations.	
Northeast Diving Service, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	RI	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
M.G. McLaren Engineering Group	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	NY	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Harbor Offshore, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	CA	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a	Withdrawn – application incomplete

					decompression chamber at the dive site as required by the standard for commercial diving operations.	
Chubasco Marine Services	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	TX	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Northern Divers USA	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	IL	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Eason Diving & Marine Contractors, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	SC	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard	Withdrawn – application incomplete

					instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	
Frogmen Divers & Marine Service	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	MA	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Aqua-Tech Marine Construction, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	ME	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Mainstream Commercial Divers, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	KY	Use the decompression procedures specified for recreational diving instructors and	Withdrawn – application incomplete

					diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	
American Underwater Contractor's, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	IL, MO	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
NE Subsurface Survey, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	MA	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Pacific Diving Industries, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)	6/24/2008	HI	Use the decompression procedures specified for	Withdrawn – application incomplete

		(1)			recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	
Active Diving & Marine, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	ID, MT, OR, WA, WY	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Liqui-Vision Technology Diving Service	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	OR	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Infrastructure Engineers Inc.	Permanent	1910.423(b)(2) & (c)(1)	6/24/2008	FL, VA, WA	Use the decompression	Withdrawn – application

		(ii); 1910.426(b)(1)			procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	incomplete
Southeastern Underwater Service, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	IN, NC, SC	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Sea Sub Systems, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	FL	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete

C&W Diving Services, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	CA	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Construction Solutions International, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	AL	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Orion Construction LP Marine Group	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	FL, TX	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial	Withdrawn – application incomplete

					diving operations.	
Pepperrell Cove Mooring Services, Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	ME	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Nautronix MariPro Inc.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	CA, TX	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Association of Diving Contractors International	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	TX	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the	Withdrawn – application incomplete

					standard for commercial diving operations. (Submitted applications on behalf of 41 member companies.)	
Pacific Underwater Construction, LLC	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	6/24/2008	CA	Use the decompression procedures specified for recreational diving instructors and diving guides by the standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Phoenix Fabricators and Erectors, Inc.	Permanent	1926.105(a)	5/1/2008	IN	Use fall-protection systems (shock-absorbing lanyards, safety harnesses, and tie-off points) in areas where net erection would be a greater hazard.	Withdrawn – variance not necessary
Kennedy Powder Company	Permanent	1910.107(h)(12)	12/6/2007	PA	Use an optical flame-detecting system instead of an automatic sprinkler system in a powder-spray booth.	Denied – not as protective as standard
Shelton W. Greer Co.	Permanent	1926.501(b)	2/7/2007	TX	Use a monitoring system instead of other forms of fall protection while	Denied – application incomplete

					performing roofing work.	
Electric Boat Corp.	Permanent	1915.53(d)(1)	11/28/2006	RI	Reduce the required stripping distance for toxic coating from 4 inches to 1 inch during application of heat (hot work).	Withdrawn – application incomplete
Lee Mechanical Contractors	Permanent	1926.62(f)(3)(i); 1910.134(d)(3)(i)(A)	10/3/2006	MO	Use a full facepiece powered air-purifying respirator for workers inside a primary lead smelter where exposures to lead may reach 1,000 times the PEL.	Withdrawn – variance not necessary
Westby Coop Creamery	Permanent	1910.24(b)	8/6/2006	WI	Use a fixed ladder system with a fall-back cage as fall protection instead of using a fixed staircase with rails.	Withdrawn – unresolved citation
Everglades Harvesting & Hauling, Inc.	Permanent	1910.142(a)(2)	6/2/2006	FL	Use a 50-foot setback instead of the required 500-foot setback for livestock kept near a temporary labor camp.	Withdrawn – application incomplete
Pasadena Tank Corp.	Permanent	1910.146	5/2/2006	TX	Erect above-ground storage tanks in confined-space areas.	Withdrawn – application incomplete
The Doe Run Co.	Permanent	1926.62(f)(2)(i)	1/31/2006	MO	Use a full facepiece powered air-purifying respirator with HEPA filters in areas where exposures may	Denied – applicant not employer of affected workers

					exposures may be up to 1000 times the permissible exposure limit for lead.	
Active Power	Not Specified	1910.169(a)(2)(i)	5/20/2005	TX	Use compressed air cylinders that do not meet ASME specifications as the OSHA standard requires.	Withdrawn – applicant not employer of affected workers
Sterling Construction Management LLC	Permanent	1926.300(b)(1)	5/13/2005	CO,WY	Use personal protective equipment instead of guards required by the standard to protect employees who use portable grinders.	Denied – not as protective as standard
Costco Wholesale	Permanent	1910.212(a)(3)(ii)	5/9/2005	MD	Allow workers to insert fingers through vertical slats when feeding baling wire into a baler.	Denied – exemption requested
Horton Automatics	Permanent	1910.215(a)(4)	5/9/2005	TX	Exemption from requirement to use work rests when operating abrasive wheel machinery.	Withdrawn – addressed by OSHA compliance directive
Benteler Automotive	Permanent	1910.217(d)(9)(iv)	4/28/2005	IN	Use mechanical slide-lock safety devices instead of safety blocks when employees adjust or repair dies in a press.	Withdrawn – site located solely in state-plan state
Burlington Northern Santa Fe Railway	Permanent	1910.253(b)(5)(ii)(A)	4/28/2005	CO	Use a sling designed and manufactured specifically to lift compressed gas cylinders.	Denied – not as protective as standard

American Restoration, Inc.	Permanent	1910.66(f)(3)(iii)(C)	4/26/2005	TX	To use ground-rigged davit systems in buildings without pivots.	Withdrawn – variance not necessary
Marchfield Clinic	Permanent	1910.1020(c)(12)(i)(G) & (c)(12)(ii)	11/29/2004	WI	Request an indefinite period in which to release an employee's medical information; use electronic signatures to authorize release of an employee's medical records.	Denied – exemption requested
U.S. Department of Interior, National Park Service	Permanent	1910.212(a)(1)	10/15/2004	WV	Operate historic machines without guards.	Denied – federal agency must apply for alternative standard, not variance
Nebraska Retirement Services, Inc.	Permanent	1910.305(g)(1)(iii)(A)	10/4/2004	NE	Connect a humidifier to the main refrigeration unit using a flexible cord.	Withdrawn – variance not necessary
The Boeing Co.	National Defense	1910.303(g)(1)(i) & (g)(1)(iv)	9/30/2004	AK	Test and service electrical units without de-energizing them and without adequate minimum approach distances between workers and the units.	Withdrawn – came into compliance with standards
General Services Administration	Permanent	1910.27(c)(1)	8/26/2004	TN	Install padding and high visibility strips around ladder to compensate for greater-than-permitted distance from	Withdrawn – site located solely in state-plan state

					center rung of ladder to nearest permanent object on climbing side.	
Servicious Technicos Maritimos (SIM)	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	3/18/2004	Chile	Use the decompression procedures specifiedfor recreational diving instructors and diving guides by standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Aggregate Industries	Permanent	1926.601(b)(9)	3/12/2004	MA	Exemption for using seat belts when workers place and remove traffic cones.	Denied – standard did not apply to applicant's activity
HydroDive Nigeria Ltd.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	1/20/2004	Nigeria	Use the decompression procedures specified for recreational diving instructors and diving guides by standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Shanye Marine Services Company, Ltd.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)	12/22/2003	TX	Use the decompression procedures specified for	Withdrawn – application incomplete

		(1)			recreational diving instructors and diving guides by standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	
Deep Offshore Marine Consultants & Contractors	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	12/19/2003	TX	Use the decompression procedures specified for recreational diving instructors and diving guides by standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
J. C. Marine Service Co., Ltd.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	12/19/2003	TX	Use the decompression procedures specified for recreational diving instructors and diving guides by standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Goodrich Corporation	Temporary	1910.1027(g)(3)(i)	12/17/2003	FL	Need additional time to comply	Withdrawn – submitted

Landing System Services					with standard.	application after effective date of the standard
Commercial Dive Services	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	12/16/2003	TX	Use the decompression procedures specified for recreational diving instructors and diving guides by standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Maritime Mechanic Ltd.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	12/8/2003	TX	Use the decompression procedures specified for recreational diving instructors and diving guides by standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
International Diving Del Peru S.A.C.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	12/8/2003	TX	Use the decompression procedures specified for recreational diving instructors and diving guides by standard instead of having a decompression chamber at the	Withdrawn – application incomplete

					dive site as required by the standard for commercial diving operations.	
Dulam International Ltd.	Permanent	1910.423(b)(2); 1910.423(c)(1)(ii); 1910.426(b)(1)	12/6/2003	TX	Use the decompression procedures specified for recreational diving instructors and diving guides by standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Seaport Equipment Ltd.	Permanent	1910.423(b)(2) & (c)(1)(ii); 1910.426(b)(1)	10/22/2003	TX	Use the decompression procedures specified for recreational diving instructors and diving guides by standard instead of having a decompression chamber at the dive site as required by the standard for commercial diving operations.	Withdrawn – application incomplete
Reilly Acoustics, LLC	Permanent	1926.452(w)(2)	9/12/2003	CO	Lock the casters of rolling scaffolds only when the height of the platform surface of the scaffold exceeds 61 inches or the surfaces	Denied – exemption requested

					surface on which the scaffold is located varies more than three degrees from level or contains holes and obstructions.	
NVR, Inc.	Permanent	1926.1052(c)(6) & (c)(7)	9/12/2003	DE, MD, NJ, NC, OH, PA, SC, TN, VA	Use an alternative height for stair rails instead of the required height.	Withdrawn – application incomplete
Valley Pride Pack, Inc.	Permanent	1910.24(b)	5/1/2003	WI	Use fixed ladders instead of fixed stairs to access work platforms.	Denied – not as protective as standard
Non-Stop Scaffolding, Inc.	Permanent	1926.451(e)(ii)	2/24/2003	LA	Use 5-5/8 inch rungs on integrated, prefabricated, scaffold-access frames instead of required 8-inch rungs.	Denied – not as protective as standard
Stone County Ironworks	Permanent	1910.243(c)(3)(i)	2/4/2003	AR	Use grinding discs when grinding welds instead of required guards.	Denied – exemption requested
Lawrence & Memorial Hospital	Permanent	1910.36(g)(1)	2/3/2003	CT	Use foam-insulation padding, warning signs, and other means to prevent employees' heads from striking a low-hanging pipe that does not meet OSHA's height requirement for ceiling projections.	Denied – not as protective as standard
Mansfield Plumbing Products, Inc.	Temporary	1926.1025(e)(1)(i)	8/19/2002	OH	Need additional time to comply	Withdrawn – variance not

					with standard.	necessary
National Association of Sewer Service Companies	Permanent	1910.303(b)	8/19/2002	All states	Use non-NRTL approved electrical equipment.	Withdrawn – variance not necessary
Chief Industries, Inc.	Permanent	1910.23(c)	7/25/2002	IN, NE	Use a monitoring system instead of other forms of fall protection while performing elevated work.	Denied – not as protective as standard
Charles Jacquin et Cie, Inc.	Permanent	1910.106(b)(4)(i)-(b)(4)(iii)	6/28/2002	PA	Use pressure-vacuum relief valves and flame arresters to control the release and ignition of ethanol vapors inside the building instead of required outside-leading vents.	Denied – not as protective as standard
Tellepsen Builders, L.P.	Permanent	1926.756(e)(2)	5/17/2002	TX	For fall protection, install the midpoint perimeter safety cable at the required height of 21 inches on perimeter columns that rise 36 inches above floor level, and delay installation of the top safety cable (at 42 inches) until the next tier of perimeter columns is in place; use personal fall-protection until the top cable installed.	Denied – not as protective as standard
Montana Logging	Permanent	1910.266(h)	4/1/2002	IN, MT, SD	Modify the	Withdrawn –

Association		(2)(vii)			Humboldt tree-cutting method by making the backcut level or above the horizontal surface of the facecut.	application incomplete
Infra Corps of Virginia, Inc.	Permanent	1910.307(b)	3/26/2002	CA, DC, DE, MD, NC, OH, VA, WV	Use non-NRTL approved remote-controlled video cameras to inspect sewage systems.	Withdrawn – site located in a state-plan state
Tri-State Utilities	Permanent	1910.307(b)	3/26/2002	CA	Use non-NRTL approved remote-controlled video cameras to inspect sewage systems.	Withdrawn – site located solely in state-plan state
Val Kotter & Sons, Inc.	Permanent	1910.307(b)	3/26/2002	CA, UT	Use non-NRTL approved remote-controlled video cameras to inspect sewage systems.	Withdrawn – site located solely in state-plan state
Ultraliner Sales, Inc.	Permanent	1910.307(b)	3/26/2002	CA	Use non-NRTL approved remote-controlled video cameras to inspect sewage systems.	Withdrawn – site located solely in state-plan state
Triad Western Construction Inc.	Permanent	1910.399; 1910.307(b)	3/26/2002	CA	Use non-NRTL approved remote-controlled video cameras to inspect sewage systems.	Withdrawn – site located solely in state-plan state
Aaron J. Conner General Contractor, Inc.	Permanent	1910.307(b)	3/26/2002	NC, VA, WV	Use non-NRTL approved remote-controlled video cameras to inspect sewage systems.	Withdrawn – site located solely in state-plan state
Eastern Pipe Service, Inc.	Permanent	1910.307(b)	3/26/2002	MA, ME, PA, NJ, NY, RI, CT,	Use non-NRTL approved remote-	Withdrawn – site located solely in state-

				VT, NH	controlled video cameras to inspect sewage systems.	plan state
ReiTech	Permanent	Unknown	11/21/2001	CA, CO, MN	Use a sling designed and manufactured specifically to lift compressed gas cylinders.	Withdrawn – applicant not employer of affected workers, and applicant sought approval for a design
McLean Contracting Co.	Permanent	1926.550(g)(4)(ii)(C)	10/5/2001	DE, MD, NJ, NC, VA	Use a stripping basket to hoist employees and materials together or separately.	Denied – exemption requested
Seaward Marine Services, Inc.	Permanent	1910.425(c)(1)	8/22/2001	CA, CT, DC, FL, GA, ME, MD, MS, NH, NJ, NY, NC, PA, RI, SC, TX, WA, Puerto Rico	Substitute various measures for the requirement to continuously tend a diver when using surface-supplied air diving equipment.	Denied – not as protective as standard
Corman Construction, Inc.	Permanent	1926.754(c)(1)(i)	7/25/2001	DE, DC, MD, NC, PA, VA, WV	Use shear connectors to connect the top flange of a structure until installation of the metal decking or walking/working surface is complete.	Withdrawn – variance not necessary
C. & E. Tobacco, Inc.	Permanent	1910.142(a)	7/20/2001	MA	Use a 140-foot setback instead of the required 500-foot setback for livestock kept near a temporary labor camp.	Denied – exemption requested
Minnkota Power Cooperative, Inc.	Permanent	1910.151(c)	6/29/2001	MN, ND	Use alternative facilities for quick drenching	Withdrawn – addressed by an OSHA

					and flushing.	directive
Ross Aluminum Foundries	Permanent	1910.242(b)	4/25/2001	OH	Use air pressure for cleaning that exceeds the 30 psi specified by standard.	Denied – not as protective as standard
Driver Pipeline Co., Inc.	Permanent	1926.652, Appendix D, paragraph (g)(6)	3/20/2001	TX	Use two instead of three aluminum hydraulics in trenching operations.	Withdrawn – application incomplete
Klumb Lumber Co.	Permanent	1910.141(c)(1)	3/5/2001	AL	Use portable toilets instead of required water closets.	Withdrawn – application incomplete
General Electric Co.	Permanent	1910.178(m)(6)	2/12/2001	AL, IA, LA, PA,WI, WY	Use powered industrial trucks to open and close railcar doors.	Withdrawn – addressed by an OSHA compliance directive
Fairview Marine, Inc.	Permanent	1915.158(b)(4)	1/30/2001	WA	Use a 20-foot line on a ring life buoy instead of the required 90-foot line.	Denied-not as protective as standard
Bath Iron Works	Permanent	1910.253(d)(4)(i); 1915.53(d)(1)	1/23/2001	ME	Inspect pipes for corrosion instead of preventing it using a suitable paint or covering as the standard requires. Also, reduce the required distance for stripping toxic coatings from four inches when welding coated metal.	Denied – not as protective as standard
ASARCO Inc.	Permanent	1910.1018(k)(2)	1/20/2001	MT	Use compressed air to clean surfaces covered by lead, arsenic, and cadmium dust.	Withdrawn – variance no longer necessary

Thomas Industrial Gases, Inc.	Permanent	1910.119(a)(iii)	8/15/2000	LA, OH, OK, PA	Exemption from the 10,000-pound limit for gas-storage tanks.	Denied – applicant not employer of affected workers
Future Foam, Inc.	Temporary	1910.1052(g)(3)	7/17/2000	WI	Use a half-mask, demand-type respirator with organic-vapor cartridge, increased ventilation and monitoring, and other conditions instead of the required continuous-flow, supplied-air respirator with hood/helmet for exposures at 625 ppm or less.	Withdrawn – variance not necessary
Kemp Mfg. Co.	Permanent	1910.178(q)(7)	5/10/2000	IL	Conduct powered industrial truck inspections every eight hours instead of after every shift as required by standard.	Denied – not as protective as standard
American Hydraulics, Inc.	Permanent	1910.252(a)(3)(i) & (a)(3)(ii)	5/10/2000	MO	Exemption from cleaning and venting requirements.	Denied – exemption requested
Stepco, Inc.	Permanent	1910.24(b)	3/27/2000	GA	Use spiral stairways instead of stairway required by standard.	Withdrawn – variance not necessary
SSI Food Service Inc.	Permanent	1910.219(c)(2)	3/15/2000	ID	Use unguarded shaft for food mixer.	Denied – exemption requested
Dakota Creek Industries Inc.	Permanent	1910.303(b)(2)	2/18/2000	WA	Use a steel-plated electrical outlet box in their shipyard.	Denied – not as protective as standard

Drury Co.	Permanent	1926.1	2/16/2000	IL, KY, MO	Exemption from the required rollover-protective structures.	Denied – exemption requested
Ozark Kenworth	Temporary	1910.37(i)	1/14/2000	MO	Need additional time to comply with standard.	Withdrawn – variance not necessary
Mayport Farmers Coop	Permanent	General-duty clause	11/30/1999	ND	Exemption from general-duty clause.	Denied – no variances from the general-duty clause
Asset Management & Engineering Solutions, Inc.	Permanent	1915.159(a)(8)	9/15/1999	OR	Exemption from requirement for independent anchorages for personal fall-arrest systems.	Denied – exemption requested
American Bridge Co.	Permanent	1926.106(d)	9/7/1999	PA	Exemption from lifesaving-skiff requirement when working over or near water.	Denied – exemption requested
Kawasaki Motors Mfg. Corp, USA	Permanent	1910.24(b)	8/3/1999	NE	Use ladders instead of fixed stairways to reach elevated platform.	Denied – not as protective as standard
General Dynamics Corp., Land Systems Division	Permanent	Unknown	7/22/1999	OH	Exemption from the restraint-system requirements for powered industrial truck operators specified by ANSI B56.1a-1989.	Withdrawn – application incomplete
USX Corp.	Permanent	1910.1029(e)(1)(iii)	6/15/1999	PA, IN	Reduce frequency of worker-exposure monitoring.	Withdrawn – addressed by an OSHA letter of interpretation
Blue Beacon International, Inc.	Permanent	1910.95(g)(6)	6/9/1999	KS	Reduce frequency of audiometric testing.	Denied – not as protective as standard
Alaska Ship and Drydock, Inc.	Permanent	1910.107(b)(5)(iv)	4/30/1999	AK	Use a fire-watch procedure for	Denied – not as protective as standard

					detecting fires in a spray booth instead of using the required automatic sprinkler system.	
Technical Ordnance, Inc.	Permanent	1910.119(e)(5)	4/1/1999	SD	Exemption from recordkeeping requirement.	Denied – exemption requested
Schmitz Ready Mix, Inc.	Permanent	1910.134(f)(8)	3/9/1999	WI	Exemption from the fit-testing requirement.	Denied – exemption requested
Prompto, Inc.	Permanent	1910.23(a)(5)	2/1/1999	ME	Provide a four-foot safety zone around a pit instead of the six-foot zone permitted in an OSHA letter of interpretation.	Denied – not as protective as standard
Dayton Superior Corp.	Permanent	1910.217(b)(7)(iii)	10/14/1998	OH	Exemption from requirement regulating control selection for mechanical power presses with part revolution clutches.	Withdrawn – application incomplete
Owens Corning	Permanent	1926.500 to .502	8/7/1998	OH	Use an operating platform with guardrails instead of the required fall protection.	Withdrawn – variance not necessary
Wynn L. White Consulting Engineers, Inc.	Permanent	1926.1101(g)(9)(ii)	8/6/1998	LA	Use alternate method of filtering asbestos fibers instead of the required method.	Denied – applicant not employer of affected workers
Trans-Asia Garment Forte Corp.	Permanent	1910.141(b)(1)(i); 1910.142(f)(3)	8/3/1998	Mariana Islands	Exemption from the potable and hot- and cold-running water requirements.	Denied – exemption requested

Global Manufacturing Corp.	Permanent	1910.141(b)(1)(i) and (b)(2)	8/3/1998	Mariana Islands	Exemption from the potable and hot- and cold-running water requirements.	Denied – exemption requested
Concorde Garment Manufacturing Corp.	Permanent	1910.141(b)(1)(i), (b)(2), and (f)(3)	8/3/1998	Mariana Islands	Exemption from the potable and hot- and cold-running water requirements.	Denied – exemption requested
LTV Steel Co., Inc.	Permanent	1910.1029(e)(1)(iii) & (e)(1)(iv)	7/17/1998	OH	Reduce frequency of worker-exposure monitoring.	Withdrawn – addressed by an OSHA letter of interpretation
Harmon, Inc.	Permanent	1926.1053(b)(4)	5/12/1998	IL	Have employees straddle ladders while cleaning or replacing windows instead of using the ladders as designed by manufacturers.	Denied – not as protective as standard
Kroeger Precast Concrete Inc.	Permanent	1910.178(a)(4)	5/12/1998	NE	Modify lifting mechanism of forklifts without manufacturer approval.	Denied – exemption requested
National Association of Tower Erectors	Permanent	1926.95; 1926.105(a); 1926.1051; 1926.1053(a)(19)(i)-(iii)	3/18/1998	All states	Use hoist lines to transport workers to work stations instead of the required fixed ladders.	Withdrawn – addressed by OSHA directive
Southwark Metal Manufacturing Co.	Permanent	1910.255(b)(4)	2/18/1998	PA, SC	Use training instead of required guarding devices.	Denied – not as protective as standard
Scordos Painting Co.	Permanent	1926.62(d)(1)(i)	2/18/1998	OH	Substitute engineering and administrative controls and respirators for required air monitoring.	Denied – unresolved citation
National Steel Corp.	Permanent	1910.23(c)(3);	11/13/1997	IL	Use a guardrail system with no	Denied – not as protective

		1910.28(b)(3)			mldbar when on platform above a tank of molten zinc.	as standard
Copperweld Bimetallics Metallon Division	Permanent	1910.111(b)(10)(ii)	11/6/1997	RI	Use an ammonia sensing system instead of having required respirators available in emergencies.	Denied – not as protective as standard
NIBCO, Inc.	Temporary	1910.1025(e)(1)	7/10/1997	NY	Need additional time to comply with standard.	Denied – application incomplete
Lockheed Martin Utility Services, Inc.	Permanent	1910.134(b)(11)	6/25/1997	KY	Use an airline-supplied suit while working in gaseous diffusion plant.	Withdrawn – variance not necessary
Montenay Power Corp.	Permanent	1910.147(c)(8); 1910.269(d)(4); 1926.417	6/4/1997	CA, FL, NY, PA	Use group lockout system instead of an individual lock-out system.	Denied – not as protective as standard
Caterpillar Inc.	Record-keeping	1904.7(a)	4/28/1997	IL	Make OSHA 200logs available to OSHA compliance officers for copying, but not provide the officers with copies.	Withdrawn – addressed by court decision
Kennecott Corp.	Permanent	1910.1018(n)(2)(ii)(A)	4/24/1997	UT	Use a panel of certified radiologists and pulmonologists to read x-rays instead using ILO U/C procedures.	Denied – not as protective as standard
Zenith Tech, Inc	Permanent	1926.1051(a)	12/18/1996	WI	Use a ladder-like system in steel column forms instead of ladders to reach elevated platforms.	Withdrawn – variance not necessary
TransTexas Natural Gas Corp.	Permanent	1910.135(a)(1)	11/15/1996	TX	Not use head protection	Withdrawn – variance not

					when employees not exposed to falling objects or situations that could result in a head injury.	necessary
Plaza Dodge	Permanent	1910.134(b)(11)	10/23/1996	FL	Use the Air-Com 2000 supplied-air breathing system.	Withdrawn – application incomplete
Ev-Air-Tight, Shoemaker, Inc.	Permanent	1926.451(i)(11)	9/27/1996	MD	Replace guardrails on a two-point scaffolding system with a pair of lanyards attached to a safety harness worn by employees.	Withdrawn – site located solely in state-plan state
Dome Technology	Permanent	General-duty clause	9/26/1996	AZ, LA, OH, TX	Use an oversized basket on an extendable boom forklift.	Denied – no variances from the general-duty clause
Black Micro Corp.	Permanent	1910.106(d)(6)(iii); 1910.109(c)(1); 1910.1200(g)(8)	7/25/1996	Mariana Islands	Exemption from requirements for storing flammable and explosive chemicals.	Denied – exemption requested
Golden H's Labor Camp	Permanent	1910.142	7/18/1996	NY	Use window areas and toilet facilities that differ from requirements of standard.	Denied – exemption requested
Breakfast Woodworks Inc.	Permanent	1910.213(d)(1)	7/17/1996	CT	Exemption from the guarding requirements of standard.	Denied – exemption requested
Lockheed Martin Astro Space	Permanent	1910.179(n)(2)(vi); 1910.180(h)(3)(vi) & (h)(4)(ii)	6/11/1996	NJ, PA	Request coverage under the variance granted to NASA for working under suspended loads.	Denied – not as protective as standard
Stone Container	Permanent	1910.261(g)	5/29/1996	FL	Use ladders	Denied – not

Corp.		(9)			instead of the required stairway.	as protective as standard
Yardney Technical Products, Inc	Permanent	1910.1000, Table Z-1	5/15/1996	CT	Exemption from the permissible exposure level to silver.	Denied – exemption requested
Kenker Box Co.	Permanent	1910.213(f)(2)	4/25/1996	OH	Use a power feeder on a saw instead of non-kickback fingers.	Denied – not as protective as standard
Automatic Equipment Mfg. Co.	Permanent	1910.212(a)(3)(ii)	4/23/1996	NE	Use any type of guarding method to keep operators away from the danger zone.	Withdrawn – performance-based standard
Cambridge Industries, Inc.	Permanent	1910.107(g)(5)	4/16/1996	IL	Use n-Butyl Acetate to clean equipment.	Withdrawn – variance not necessary
Martin G. Imbach, Inc.	Permanent	1926.550(g)(3)(ii)(C)	4/3/1996	MD	Paint a 10-foot lead at the end of the controlled-load lowering line to warn the operator of an impending "two-blocking" condition instead of using an "anti-two-block" system required by the standard.	Denied-not as protective as standard
Martin G. Imbach, Inc.	Permanent	1917.45(j)(1)(iii)(F)	4/3/1996	MD	Use a wire-rope clip to fasten the dead end of the load line (wire rope) to the live end of the line instead of looping the dead end of the line and fastening the loop with the clip as required by the standard.	Withdrawn – application incomplete

Lukens Steel Co.	Permanent	1910.23(c)(1)	3/22/1996	PA	Use flashing lights and other visual warning techniques instead of guardrails for raised platform.	Withdrawn – application incomplete
KAJIMA Engineering and Construction, Inc.	Permanent	1926.800(m)(7)(ii)	3/15/1996	IL	Keep flammable and combustible materials within 100 feet of an access opening, use trenches to catch spills, and keep fire extinguishers nearby instead of using the fire resistant barriers described by standard.	Withdrawn – variance not necessary
Energizer Power Systems	Permanent	1910.1027(j)(1) & (j)(3)	2/29/1996	All states	Use air showers instead of required wet showers.	Withdrawn – application incomplete
Energizer Power Systems	Temporary	1910.1027(f)	2/14/1996	All states	Need additional time to comply with standard.	Denied – submitted application after effective date of the standard
SAFT America, Inc.	Permanent	1910.1027(i)(2)(i); 1910.1027(j)(1), (j)(2), and (j)(3)(i)	2/14/1996	GA	Use air showers instead of required wet showers, and specially designed coveralls instead of change rooms.	Withdrawn – application incomplete
Justrite Manufacturing Co., LLC	Permanent	1910.144(a)(1)(ii)	2/14/1996	IL	Paint safety cans a natural color instead of red.	Denied – applicant not employer of affected workers
Kamtech, Inc.	Permanent	1926.303(c)(2)	1/25/1996	NY	Use a dedicated grinder without	Denied – not as protective as standard

					a work rest for each work site, along with training and other conditions.	
IMC Construction Co.	Permanent	1910.106(d)(3)(ii)(a) & (ii)(b)	9/25/1995	LA	Use fiberglass instead of metal or wood for flammable combustible liquid cabinets.	Withdrawn – performance-based standard
Marathon Power Technologies Co.	Temporary	1910.1027(j)(1) & (j)(3)	9/20/1995	TX	Need additional time to comply with standard.	Denied – submitted application after effective date of the standard
Winbco Tank Co.	Permanent	1926.451(a)(4), (a)(5), and (a)(10)	9/19/1995	IA	Use alternative scaffolding system when constructing above-ground storage tanks.	Withdrawn – applicant allowed to follow conditions of Marathon Steel's variance
Johnson Machine & Production	Permanent	1910.141(c)(1)(i)	8/23/1995	PA	Use a composting toilet facility instead of required toilet.	Withdrawn – alternative is a de minimis violation
AK Steel	Permanent	1910.179(n)(4)(i)	8/10/1995	OH	Use a designated safety zone to test hoist-limit switch.	Withdrawn – application incomplete
Digi-Trax on behalf of the International Society of Blood Transfusion	Permanent	1910.1030(g)(1)(i)	7/11/1995	IL	Use on-demand thermal transfer printers to generate black on white biohazard labels.	Withdrawn – variance not necessary
Campbell & Associates, Inc.	Permanent	1926.451(a)(4), (a)(5), and (a)(10)	7/10/1995	AL	Use alternative scaffolding system when constructing above-ground storage tanks.	Withdrawn – applicant allowed to follow conditions of Marathon Steel's variance

Pure Industries	Permanent	1910.1000, Table Z-1	6/20/1995	PA	Use a different analytical method for assessing coal-tar-pitch volatiles.	Withdrawn – variance not necessary
Commonwealth Edison Co.	Temporary	1926.502(d)(6)	6/1/1995	IL	Need additional time to comply with standard.	Withdrawn – variance not necessary
Northern Erectors Association of the BTEA	Permanent	Policy memorandum	5/26/1995	MA	Follow old fall-protection requirements rather than those described in interim policy memorandum.	Withdrawn – no variances from policy memoranda
AK Steel Corp.	Permanent	1910.29(f)(3)	5/23/1995	OH	Use a mobile ladder stand having a different design and configuration than required by the standard.	Withdrawn – variance not necessary
Wunderlich Doors	Permanent	Unknown	4/28/1995	IL	Use an elevated hydraulic lift truck with sides folded out in the horizontal position as a temporary platform, and use ladders on platform if toeboards and safety rails are installed on platform.	Withdrawn – application incomplete
James River Pennington, Inc.	Temporary	1910.261(g)(17)(i)	4/26/1995	AL	Need additional time to comply with standard.	Denied – submitted application after effective date of the standard

Occupational Safety & Health Administration
200 Constitution Ave NW
Washington, DC 20210
800-321-6742 (OSHA)
TTY
www.OSHA.gov

FEDERAL GOVERNMENT

White House
Severe Storm and Flood Recovery Assistance
Disaster Recovery Assistance
DisasterAssistance.gov
USA.gov
No Fear Act Data
U.S. Office of Special Counsel

OCCUPATIONAL SAFETY & HEALTH

Frequently Asked Questions
A-ZIndex
Freedom of Information Act - OSHA
Read The OSHA Newsletter
Subscribe to the OSHA Newsletter
OSHA Publications
Office of Inspector General

ABOUT THIS SITE

Freedom of Information Act - DOL
Privacy & Security Statement
Disclaimers
Important Web Site Notices
Plug-ins Used by DOL
Accessibility Statement

EXIBIT #31

The New York Times

9,000 Unvaccinated N.Y.C. Workers Put on Unpaid Leave as Mandate Begins

Mayor Bill de Blasio said thousands more did get the shot and that the first day of the vaccine mandate went smoothly, without significant service disruptions.

About 9,000 municipal employees, less than 6 percent of the work force, were placed on unpaid leave for refusing to get vaccinated. Mayor Bill De Blasio said that there were no disruptions to city services. Benjamin Norman for The New York Times


By Joseph Goldstein and Sharon Otterman

Published Nov. 1, 2021 Updated Nov. 4, 2021

Hundreds of firefighters called in sick in what appeared to be an organized

protest. Sanitation workers were playing catch up, after garbage collection lagged last week.

But for the most part, New York City's vast municipal work force returned to work as usual on Monday, with more than a few sore arms and new vaccination cards, as the city's coronavirus vaccine mandate for its employees went into effect, officials said.

"We're not seeing disruptions to any city services," Mayor Bill de Blasio said late Monday morning.

Across all city agencies, Mr. de Blasio said, about 9,000 municipal employees have been placed on unpaid leave — all eligible to return to work as soon as they get a first dose.

Another 12,000 city workers had yet to get their first dose of a Covid-19 vaccine, but had applied for a religious or medical exemption. They are allowed to continue working while the city evaluates their requests. The city has over 370,000 people on its payroll.

In the 12 days from when the mandate was first announced and Monday's deadline, the vaccination rate shot up at many city agencies. At the city's Emergency Medical Service, which operates ambulances, the vaccination rate jumped to 87 percent from 61 percent. The Sanitation Department's vaccination rate jumped 20 percentage points, to 82 percent from 62

EXIBIT #9

ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION IN THE WORKPLACE

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such Order remains in effect; and

WHEREAS, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, the COVID-19 virus continues to spread and mutate, and on November 26, 2021, the World Health Organization ("WHO") declared a new variant of COVID-19, named Omicron, a variant of concern and preliminary evidence suggests an increased risk of reinfection and spread across the world, including to the United States; and

WHEREAS, on November 26, 2021, New York State Governor Kathy Hochul issued Executive Order No. 11 to address new emerging threats across the State posed by COVID-19, finding that New York is experiencing COVID-19 transmission at rates the State has not seen since April 2020 and that the rate of new COVID-19 hospital admissions has been increasing over the past month to over 300 new admissions a day; and

WHEREAS, COVID-19 spreads when an infected person exhales the virus and these are breathed in by other people or land on their eyes, noses, or mouth, with people closer than 6 feet from the infected person most likely to get infected, making the risk of COVID-19 transmission greater in workplace settings because of close proximity to others and the sharing of office space and facilities such as restrooms, elevators, lobbies, meeting and break rooms, and other common areas; and

WHEREAS, the WHO and the U.S. Centers for Disease Control and Prevention ("CDC") have advised all individuals to take measures to reduce their risk of COVID-19, especially the Delta and Omicron variants, including vaccination, which is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, a study by Yale University demonstrated that the City's vaccination campaign was estimated to have prevented about 250,000 COVID-19 cases, 44,000 hospitalizations and 8,300 deaths from COVID-19 infection since the start of vaccination through July 1, 2021, and the City believes the number of prevented cases, hospitalizations and death has risen since then; and that between January 1, 2021, and June 15, 2021, over 98% of hospitalizations and deaths from COVID-19 infection involved those who were not fully vaccinated;

WHEREAS, a system of vaccination that requires employers to implement vaccination policies for their employees will potentially save lives, protect public health, and promote public safety; and

WHEREAS, on September 9, 2021, President Biden issued an Executive Order stating that "It is essential that Federal employees take all available steps to protect themselves and avoid spreading COVID-19 to their co-workers and members of the public," and ordering each federal agency to "implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law"; and

WHEREAS, on August 16, 2021, Mayor Bill de Blasio signed Emergency Executive Order No. 225, the "Key to NYC," which requires the employees, as well as patrons, of establishments providing indoor entertainment, dining, and fitness to show proof of at least one dose of an approved COVID-19 vaccine, and such Order, as reissued in Emergency Executive Order No. 316 on December 13, 2021, is still in effect; and

WHEREAS, on August 24, 2021, I issued an Order requiring that Department of Education employees, contractors, and visitors provide proof of COVID-19 vaccination before entering a DOE building or school setting, and such Order was re-issued on September 12 and 15, 2021, and subsequently amended on September 28, 2021, and such Orders and amendment were ratified by the Board of Health on September 17, 2021 and October 18, 2021; and

WHEREAS, on September 12, 2021, I issued an Order requiring that staff of early childhood programs or services provided under contract with the Department of Education or the Department of Youth and Community Development provide proof of COVID-19 vaccination, and that Order was ratified by the Board of Health on September 17, 2021; and

WHEREAS, on October 20, 2021, I issued an Order requiring that City employees provide proof of vaccination to their agencies or offices by October 29, 2021 or be excluded from their workplace, and on October 31, 2021, I issued a supplemental Order, and both Orders were ratified by the Board of Health on November 1, 2021; and

WHEREAS, on November 17, 2021, I issued an Order requiring COVID-19 vaccinations for staff of child care programs, as defined therein, and in early intervention programs, and such Order was ratified by the Board of Health on November 19, 2021; and

WHEREAS, on December 2, 2021, I issued an Order requiring COVID-19 vaccinations for all nonpublic school staff and volunteers; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the "Charter"), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene ("the Department") extends; and

WHEREAS, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and

conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance and protection of public health; and

WHEREAS, Section 17-104 of the New York City Administrative Code ("Administrative Code") directs the Department to adopt prompt and effective measures to prevent the communication of infectious diseases such as COVID-19, and in accordance with Section 17-109(b) of Administrative Code, the Department may adopt vaccination measures to effectively prevent the spread of communicable diseases; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is needed to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

NOW THEREFORE, I, Dave A. Chokshi, MD, MSc, Commissioner of the Department of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and hereby order that:

1. Beginning December 27, 2021, workers must provide proof of vaccination against COVID-19 to a covered entity before entering the workplace, and a covered entity must exclude from the workplace any worker who has not provided such proof, except as provided in paragraph 5.

2. Covered entities shall verify workers' proof of vaccination. Covered entities shall:

    a. maintain a copy of each worker's proof of vaccination and, if applicable, a record of reasonable accommodation(s) as described in (b)(iv); *OR*

    b. maintain a record of such proof of vaccination, provided that such record shall include:

        i. the worker's name; and

        ii. whether the person is fully vaccinated; and

        iii. for a worker who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose must be provided, which must be no later than 45 days after the proof of first dose was submitted; and

        iv. for a worker who does not submit proof of COVID-19 vaccination because of a reasonable accommodation, the record must indicate that such accommodation was provided, and the covered entity must separately maintain records stating the basis for such accommodation and any supporting documentation provided by such worker; *OR*

    c. check the proof of vaccination before allowing a worker to enter the workplace and maintain a record of the verification.

For a non-employee worker, such as a contractor, a covered entity may request that the worker's employer confirm the proof of vaccination in lieu of maintaining the above records. A covered entity shall maintain a record of such request and confirmation.

Records created or maintained pursuant to this section shall be treated as confidential.

A covered entity shall, upon request by a City agency, make available for inspection records required to be maintained by this section, consistent with applicable law.

3. No later than December 27, 2021, a covered entity shall affirm on a form provided by the Department compliance with the requirements of paragraph 2 of this Order and post the affirmation in a conspicuous location.

4. For purposes of this Order:

   a. "Covered entity" means:

      i. a non-governmental entity that employs more than one worker in New York City or maintains a workplace in New York City; or

      ii. a self-employed individual or a sole practitioner who works at a workplace or interacts with workers or the public in the course of their business.

   b. "Fully vaccinated" means at least two weeks have passed after an individual received a single dose of a COVID-19 vaccine that requires only one dose, or the second dose of a two-dose series of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization, or any other circumstance defined by the Department in its guidance associated with this Order.

   c. "Proof of vaccination" means one of the following documents demonstrating that an individual has (1) been fully vaccinated against COVID-19; (2) received one dose of a single-dose COVID-19 vaccine; or (3) received the first dose of a two-dose COVID-19 vaccine, provided that a worker providing proof of only such first dose provides proof of receiving the second dose of that vaccine within 45 days after receiving the first dose:

      i. A CDC COVID-19 Vaccination Record Card or other official immunization record from the jurisdiction, city, state, or country where the vaccine was administered, or from a healthcare provider or other approved immunizer who administered the vaccine, that provides the person's name, vaccine brand, and date of administration. A digital photo or photocopy of such record is also acceptable.

      ii. New York City COVID Safe App showing a vaccination record;

      iii. A valid New York State Excelsior Pass/Excelsior Pass Plus;

      iv. CLEAR Health Pass; or

v. Any other method specified by the Commissioner as sufficient to demonstrate proof of vaccination.

d. "Worker" means an individual who works in-person in New York City at a workplace. Worker includes a full- or part-time staff member, employer, employee, intern, volunteer or contractor of a covered entity, as well as a self-employed individual or a sole practitioner.

Worker does not include:

i. an individual who works from their own home and whose employment does not involve interacting in-person with co-workers or members of the public;

ii. an individual who enters the workplace for a quick and limited purpose; or

iii. non-City residents who are performing artists, college or professional athletes, or individuals accompanying such performing artists or college or professional athletes who do not have to display proof of vaccination pursuant to the Key to NYC program, Emergency Executive Order No. 316 and successor Orders.

e. "Workplace" means any location, including a vehicle, where work is performed in the presence of another worker or member of the public.

5. Nothing in this Order shall be construed to prohibit reasonable accommodations for medical or religious reasons.

6. This Order shall not apply to covered entities or individuals who are already subject to another Order of the Commissioner of the Department, Board of Health, the Mayor, or a State or federal entity that is in effect and requires them to maintain or provide proof of full vaccination or to individuals who have been granted a reasonable accommodation pursuant to such requirement.

7. This Order shall take effect immediately, and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter, or modify this Order pursuant to Section3.01(d) of the Health Code.

Dated: December 13, 2021

Dave A. Chokshi, MD, MSc
Commissioner

EXIBIT #8

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION FOR
NONPUBLIC SCHOOL STAFF**

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

WHEREAS, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, on November 26, 2021, New York State Governor Kathy Hochul, pursuant to Section 28 of Article 2-B of the Executive Law, found that New York is experiencing COVID-19 transmission at rates the State has not seen since April 2020 and that the rate of new COVID-19 hospital admissions has been increasing over the past month to over 300 new admissions a day due to the Delta variant, and therefore declared a State disaster emergency for the entire State of New York through January 15, 2022; and

WHEREAS, on November 26, 2021, the World Health Organization ("WHO") declared the new COVID B.1.1.529 variant, named Omicron, a variant of concern because it has a large number of mutations and preliminary evidence suggests an increased risk of reinfection and spread across the world, including to the United States; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the "Charter"), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene ("the Department") extends; and

WHEREAS, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

WHEREAS, the WHO and the U.S. Centers for Disease Control and Prevention ("CDC") have advised all individuals to take measures to reduce their risk of COVID-19, especially the Delta and Omicron variants, including vaccination, which is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, the CDC has recommended that school teachers and staff be "vaccinated as soon as possible" because vaccination is "the most critical strategy to help schools safely resume full operations [and] is the leading public health prevention strategy to end the COVID-19 pandemic;" and

WHEREAS, on November 30, 2021, the federal Administration for Children and Families issued an interim final rule requiring that all Head Start staff and volunteers working in classrooms or directly with children be vaccinated for COVID-19 by January 31, 2022; and

WHEREAS, Section 17-104 of the Administrative Code of the City of New York directs the Department to adopt prompt and effective measures to prevent the communication of infectious diseases such as COVID-19, and in accordance with Section 17-109(b), the Department may adopt vaccination measures to effectively prevent the spread of communicable diseases; and

WHEREAS, the City is committed to safe, in-person learning in all preschool to grade 12 schools, following public health science; and

WHEREAS, more than 240,000 students across the City attend nonpublic schools, including students in the communities that have been disproportionately affected by the COVID-19 pandemic and students who are too young to be eligible to be vaccinated; and

WHEREAS, a system of vaccination for individuals working in nonpublic schools will potentially save lives, protect public health, and promote public safety; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

WHEREAS, on September 12, 2021, I issued an Order requiring COVID-19 vaccinations for individuals working in certain covered child care programs, as defined therein; and

WHEREAS, on September 15, 2021, I issued and on September 28, 2021, I amended, an Order requiring COVID-19 vaccination for DOE employees, contractors, and others who work in-person in New York City Department of Education ("DOE") school settings or DOE buildings and for staff of NYC charter schools; and

WHEREAS, on November 17, 2021, I issued an Order requiring COVID-19 vaccinations for staff of child care programs, as defined therein, and in early intervention programs; and

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, do hereby order that:

1. No later than December 20, 2021, every nonpublic school must exclude any staff member who has not provided proof of vaccination against COVID-19, except as provided in paragraph 6 of this Order.

2. All staff members at any nonpublic school hired on or after the effective date of this Order must provide proof of vaccination against COVID-19 to their employer on or before their start date, except as provided in paragraph 6 of this Order.

3. Nonpublic schools to whom staff must submit proof of vaccination status, must securely maintain a record of such submission, either electronically or on paper, and must make such records immediately available to the Department, or its designee, upon request. These records must include the following:
   (a) Each staff member's name and start date.
   (b) The type of proof of vaccination submitted; the date such proof was collected; and whether the person is fully vaccinated, as defined in this Order.
   (c) For any staff member who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose must be provided, which must be no later than 45 days after the proof of first dose was submitted.
   (d) For any staff member who does not submit proof of COVID-19 vaccination because of a reasonable accommodation, the record must indicate that such accommodation was provided, and the employer must separately maintain records stating the basis for such accommodation and the supporting documentation provided by such staff in accordance with applicable laws, including the Americans with Disabilities Act.

4. No later than December 28, 2021, nonpublic schools must electronically submit an initial affirmation of compliance with the requirements of paragraph 3 of this Order in the form prescribed by the Department, and such nonpublic schools must also submit follow up affirmations in the form prescribed by the Department by February 17, 2022, to demonstrate that all staff are fully vaccinated.

5. For the purposes of this Order:

   "Fully vaccinated" means at least two weeks have passed after an individual received a single dose of a COVID-19 vaccine that only requires one dose, or the second dose of a two-dose series of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization, or any other circumstance defined by the Department in its guidance associated with this Order.

   "Nonpublic school" means any location other than a DOE or charter school setting, as defined in my Order of September 15, 2021, where instruction and related services are provided to students from preschool through grade 12, or any portion thereof, such as only elementary or only secondary school, and includes:
   (a) locations providing such instruction and related services:
      (i) to students between the ages typically served from preschool through grade 12, including schools that do not separate students into "grades" or similar groupings; and
      (ii) pursuant to New York State Education Law section 3204; and
   (b) residences of students receiving home instruction from a school other than a DOE or charter school.

   "Nonpublic school" does not include "covered child care programs," "child care programs," or "early intervention provider" as defined in my Orders of September 12, 2021, and November 17, 2021.

"Nonpublic school staff" means staff serving students in nonpublic schools and includes (i) full or part-time employees and (ii) all unpaid adults serving in nonpublic school settings including, but not limited to, student teachers and volunteers supporting school functions.

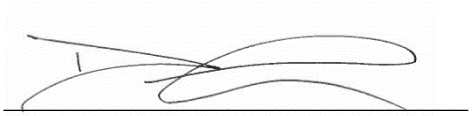
"Proof of vaccination" means proof that an individual:

(a) Has been fully vaccinated;
(b) Has received a single dose vaccine, or the second dose of a two-dose vaccine, even if two weeks have not passed since they received the dose; or
(c) Has received the first dose of a two-dose vaccine, in which case they must additionally provide proof that they have received the second dose of that vaccine within 45 days after providing proof of the first dose.

6. Nothing in this Order shall be construed to prohibit any reasonable accommodations otherwise required by law.

7. This Order shall be effective immediately and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter, or modify this Order pursuant to Section 3.01(d) of the Health Code.

Dated: December 2, 2021



Dave A. Chokshi, M.D., MSc
Commissioner

EXIBIT #10

OSH Act of 1970

Table of Contents General Duty Clause Complete OSH Act Version ("All-in-One")

Public Law 91-596
84 STAT. 1590
91st Congress, S.2193
December 29, 1970,
as amended through January 1, 2004. (1)

An Act

To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, **That this Act may be cited as the "Occupational Safety and Health Act of 1970."**

Footnote (1) See Historical notes at the end of this document for changes and amendments affecting the OSH Act since its passage in 1970 through January 1, 2004.

SEC. 2. Congressional Findings and Purpose

29 USC 651

(a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources –

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health; affecting the OSH Act since its passage in 1970 through January 1, 2004.

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem;

(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

SEC. 3. Definitions

29 USC 652

For the purposes of this Act --

(1) The term "Secretary" means the Secretary of Labor.

(2) The term "Commission" means the Occupational Safety and Health Review Commission established under this Act.

(3) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than the Trust Territory of the Pacific Islands), or between points in the same State but through a point outside thereof.

For Trust Territory coverage, including the Northern Mariana Islands, see Historical notes

(4) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(5) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States (not including the United States Postal Service) or any State or political subdivision of a State.

Pub. L. 105-241 United States Postal Service is an employer subject to the Act. See Historical notes.

(6) The term "employee" means an employee of an employer who is employed in a business of his employer which affects commerce.

(7) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(8) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(9) The term "national consensus standard" means any occupational safety and health standard or modification thereof which (1), has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, (2) was formulated in a manner which afforded an opportunity for diverse views to be considered and (3) has been designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.

(10) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on the date of enactment of this Act.

(11) The term "Committee" means the National Advisory Committee on Occupational Safety and Health

established under this Act.

(12) The term "Director" means the Director of the National Institute for Occupational Safety and Health.

(13) The term "Institute" means the National Institute for Occupational Safety and Health established under this Act.

(14) The term "Workmen's Compensation Commission" means the National Commission on State Workmen's Compensation Laws established under this Act.

SEC. 4. Applicability of This Act

(a) This Act shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this Act by the courts established for areas in which there are no United States district courts having jurisdiction.

29 USC 653

For Canal Zone and Trust Territory coverage, including the Northern Mariana Islands, see Historical notes.

(b)

(1) Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(2) The safety and health standards promulgated under the Act of June 30, 1936, commonly known as the Walsh-Healey Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), Public Law 91-54, Act of August 9, 1969 (40 U.S.C. 333), Public Law 85-742, Act of August 23, 1958 (33 U.S.C. 941), and the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.) are superseded on the effective date of corresponding standards, promulgated under this Act, which are determined by the Secretary to be more effective. Standards issued under the laws listed in this paragraph and in effect on or after the effective date of this Act shall be deemed to be occupational safety and health standards issued under this Act, as well as under such other Acts.

(3) The Secretary shall, within three years after the effective date of this Act, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this Act and other Federal laws.

(4) Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

SEC. 5. Duties

(a) Each employer --

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

29 USC 654

(2) shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

SEC. 6. Occupational Safety and Health Standards

(a) Without regard to chapter 5 of title 5, United States Code, or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

29 USC 655

(b) The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a

representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health and Human Services, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed under section 7 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health and Human Services, together with all pertinent factual information developed by the Secretary or the Secretary of Health and Human Services, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(6)

(A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that –

(i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date,

(ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and

(iii) he has an effective program for coming into compliance with the standard as quickly as practicable.

Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing: *Provided*, That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more that twice (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

(B) An application for temporary order under this paragraph (6) shall contain:

(i) a specification of the standard or portion thereof from which the employer seeks a variance,

(ii) a representation by the employer, supported by representations from qualified persons having

firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

(iii) a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,

(iv) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

(v) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(C) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health and Human Services certifies, that such variance is necessary to permit an employer to participate in an experiment approved by him or the Secretary of Health and Human Services designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(7) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health and Human Services, such examinations may be furnished at the expense of the Secretary of Health and Human Services. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health and Human Services, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health and Human Services, may by rule promulgated pursuant to section 553 of title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning , monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

(c)

(1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, Unites States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines –

(A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and

(B) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with section 6 (b) of this Act, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

(d) Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(e) Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a

statement of the reasons for such action, which shall be published in the Federal Register.

(f) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health and Human Services regarding the need for mandatory standards in determining the priority for establishing such standards.

SEC. 7. Advisory Committees; Administration

29 USC 656

(a)

(1) There is hereby established a National Advisory Committee on Occupational Safety and Health consisting of twelve members appointed by the Secretary, four of whom are to be designated by the Secretary of Health and Human Services, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and composed of representatives of management, labor, occupational safety and occupational health professions, and of the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

(2) The Committee shall advise, consult with, and make recommendations to the Secretary and the Secretary of Health and Human Services on matters relating to the administration of the Act. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public and a transcript shall be kept and made available for public inspection.

(3) The members of the Committee shall be compensated in accordance with the provisions of section 3109 of title 5, United States Code.

(4) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

(b) An advisory committee may be appointed by the Secretary to assist him in his standard-setting functions under section 6 of this Act. Each such committee shall consist of not more than fifteen members and shall include as a member one or more designees of the Secretary of Health and Human Services, and shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States. An advisory committee may also include such other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of such committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards producing organizations, but the number of persons so appointed to any such advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under section 3109 of title 5, United States Code. The Secretary shall pay to any State which is the employer of a member of such a committee who is a representative of the health or safety agency of that State, reimbursement sufficient to cover the actual cost to the State resulting from such representative's membership on such committee. Any meeting of such committee shall be open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

(c) In carrying out his responsibilities under this Act, the Secretary is authorized to –

(1) use, with the consent of any Federal agency, the services, facilities, and personnel of such agency, with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement; and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS-18 under section 5332 of title 5, United States Code, including travel time, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

(d) There is established a Maritime Occupational Safety and Health Advisory Committee, which shall be a continuing body and shall provide advice to the Secretary in formulating maritime industry standards and regarding matters pertaining to the administration of this Act related to the maritime industry. The composition of such advisory committee shall be consistent with the advisory committees established under subsection (b). A member of the advisory committee who is otherwise qualified may continue to serve until a successor is appointed. The Secretary may promulgate or amend regulations as necessary to implement this subsection.

SEC. 8. Inspections, Investigations, and Recordkeeping

29 USC 657

(a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized –

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

(b) In making his inspections and investigations under this Act the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of a contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c)

(1) Each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health and Human Services, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health and Human Services, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The Secretary shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards.

(2) The Secretary, in cooperation with the Secretary of Health and Human Services, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Secretary, in cooperation with the Secretary of Health and Human Services, shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 6, and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Secretary, the Secretary of Health and Human Services, or a State agency under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(e) Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f)

(1) Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to subsection (g) of this section. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Secretary determines there are no reasonable grounds to believe that a violation or danger exists he shall notify the employees or representative of the employees in writing of such determination.

(2) Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act which they have reason to believe exists in such workplace. The

inspection, working, or any interview of his employees whom they have reason to believe exists in such workplace. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

(g)

(1) The Secretary and Secretary of Health and Human Services are authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section.

(2) The Secretary and the Secretary of Health and Human Services shall each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment.

(h) The Secretary shall not use the results of enforcement activities, such as the number of citations issued or penalties assessed, to evaluate employees directly involved in enforcement activities under this Act or to impose quotas or goals with regard to the results of such activities.

Pub. L. 105-198 added subsection (h).

SEC. 9. Citations

29 USC 658

(a) If, upon inspection or investigation, the Secretary or his authorized representative believes that an employer has violated a requirement of section 5 of this Act, of any standard, rule or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Secretary may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

(b) Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Secretary, at or near each place a violation referred to in the citation occurred.

(c) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

SEC. 10. Procedure for Enforcement

29 USC 659

(a) If, after an inspection or investigation, the Secretary issues a citation under section 9(a), he shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 17 and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If, within fifteen working days from the receipt of the notice issued by the Secretary the employer fails to notify the Secretary that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (c) within such time, the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(b) If the Secretary has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the Secretary shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 17 by reason of such failure, and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the Secretary's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the Secretary, the employer fails to notify the Secretary that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(c) If an employer notifies the Secretary that he intends to contest a citation issued under section 9(a) or notification issued under subsection (a) or (b) of this section, or if, within fifteen working days of the issuance of a citation under section 9(a), any employee or representative of employees files a notice with the Secretary alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section). The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Secretary, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

SEC. 11. Judicial Review

29 USC 660

(a) Any person adversely affected or aggrieved by an order of the Commission issued under subsection (c) of section 10 may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code.

Pub. L. 98-620

(b) The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office, and the provisions of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 10, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a), the court of appeals may assess the penalties provided in section 17, in addition to invoking any other available remedies.

(c)

(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within 90 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph 2 of this subsection.

SEC. 12. The Occupational Safety and Health Review Commission

29 USC 661

(a) The Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Commission under this Act. The President shall designate one of the members of the Commission to serve as Chairman.

(b) The terms of members of the Commission shall be six years except that

(1) the members of the Commission first taking office shall serve, as designated by the President at the time of

appointment, one for a term of two years, one for a term of four years, and one for a term of six years, and

(2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term.

A member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(c) (Text omitted.)

See notes on omitted text.

(d) The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.

(e) The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such administrative law judges and other employees as he deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of title 5, United States Code.

Pub. L. 95-251

(f) For the purpose of carrying out its functions under this Act, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

(g) Every official act of the Commission shall be entered of record, and its hearings and records shall be open to the public. The Commission is authorized to make such rules as are necessary for the orderly transaction of its proceedings. Unless the Commission has adopted a different rule, its proceedings shall be in accordance with the Federal Rules of Civil Procedure.

(h) The Commission may order testimony to be taken by deposition in any proceedings pending before it at any state of such proceeding. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(i) For the purpose of any proceeding before the Commission, the provisions of section 11 of the National Labor Relations Act (29 U.S.C. 161) are hereby made applicable to the jurisdiction and powers of the Commission.

(j) An administrative law judge appointed by the Commission shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such administrative law judge by the Chairman of the Commission, and shall make a report of any such determination which constitutes his final disposition of the proceedings. The report of the administrative law judge shall become the final order of the Commission within thirty days after such report by the administrative law judge, unless within such period any Commission member has directed that such report shall be reviewed by the Commission.

(k) Except as otherwise provided in this Act, the administrative law judges shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5, United States Code. Each administrative law judge shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5, United States Code.

SEC. 13. Procedures to Counteract Imminent Dangers

29 USC 662

(a) The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(b) Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this Act. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought.

(d) If the Secretary arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, might bring an action against the Secretary in the United States district court for the district in which the imminent danger is alleged to exist or the employer has its principal office, or for the District of Columbia, for a writ of mandamus to compel the Secretary to seek such an order and for such further relief as may be appropriate.

SEC. 14. Representation in Civil Litigation

Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this Act but all such litigation shall be subject to the direction and control of the Attorney General.

29 USC 663

SEC. 15. Confidentiality of Trade Secrets

All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

29 USC 664

SEC. 16. Variations, Tolerances, and Exemptions

The Secretary, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

29 USC 665

SEC. 17. Penalties

(a) Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard, rule, or order promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty of not more than $70,000 for each violation, but not less than $5,000 for each willful violation.

29 USC 666

Pub. L. 101-508 increased the civil penalties in subsections (a)-(d) & (i). See Historical notes.

(b) Any employer who has received a citation for a serious violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, shall be assessed a civil penalty of up to $7,000 for each such violation.

(c) Any employer who has received a citation for a violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of regulations prescribed pursuant to this Act, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to $7,000 for each violation.

(d) Any employer who fails to correct a violation for which a citation has been issued under section 9(a) within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than $7,000 for each day during which such failure or violation continues.

(e) Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than $20,000 or by imprisonment for not more than one year, or by both.

Pub. L. 98-473 Maximum criminal fines are increased by the Sentencing Reform Act of 1984, 18 USC § 3551 et seq. See Historical notes.

(f) Any person who gives advance notice of any inspection to be conducted under this Act, without authority from the Secretary or his designees, shall, upon conviction, be punished by a fine of not more than $1,000 or by imprisonment for not more than six months, or by both.

See historical notes.

(g) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(h)

(1) Section 1114 of title 18, United States Code, is hereby amended by striking out "designated by the Secretary of Health and Human Services to conduct investigations, or inspections under the Federal Food, Drug, and Cosmetic Act" and inserting in lieu thereof "or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions".

(2) Notwithstanding the provisions of sections 1111 and 1114 of title 18, United States Code, whoever, in violation of the provisions of section 1114 of such title, kills a person while engaged in or on account of the performance of investigative, inspection, or law enforcement functions added to such section 1114 by paragraph (1) of this subsection, and who would otherwise be subject to the penalty provisions of such section 1111, shall be punished by imprisonment for any term of years or for life.

(i) Any employer who violates any of the posting requirements, as prescribed under the provisions of this Act, shall be assessed a civil penalty of up to $7,000 for each violation.

(j) The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(k) For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(l) Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation is alleged to have occurred or where the employer has its principal office.

SEC. 18. State Jurisdiction and State Plans

(a) Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6.

29 USC 667

(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgement –

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State,

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce,

(3) provides for a right of entry and inspection of all workplaces subject to the Act which is at least as effective as that provided in section 8, and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such 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,

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such

information, as the Secretary shall from time to time require.

(d) If the Secretary rejects a plan submitted under subsection (b), he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

(e) After the Secretary approves a State plan submitted under subsection (b), he may, but shall not be required to, exercise his authority under sections 8, 9, 10, 13, and 17 with respect to comparable standards promulgated under section 6, for the period specified in the next sentence. The Secretary may exercise the authority referred to above until he determines, on the basis of actual operations under the State plan, that the criteria set forth in subsection (c) are being applied, but he shall not make such determination for at least three years after the plan's approval under subsection (c). Upon making the determination referred to in the preceding sentence, the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination.

(f) The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

(g) The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition to modify or set aside in whole or in part the action of the Secretary. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28, United States Code. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from the date of enactment of this Act, whichever is earlier.

SEC. 19. Federal Agency Safety Programs and Responsibilities

29 USC 668

(a) It shall be the responsibility of the head of each Federal agency (not including the United States Postal Service) to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6. The head of each agency shall (after consultation with representatives of the employees thereof) –

Pub. L. 50-241

(1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 6;

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;

(4) consult with the Secretary with regard to the adequacy as to form and content of records kept pursuant to subsection (a)(3) of this section; and

(5) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7902(e)(2) of title 5, United States Code.

Pub. L. 97-375

(b) The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a)(5) of this section, together with his evaluations of and recommendations derived from such reports.

(c) Section 7902(c)(1) of title 5, United States Code, is amended by inserting after "agencies" the following: "and of labor organizations representing employees".

(d) The Secretary shall have access to records and reports kept and filed by Federal agencies pursuant to subsections (a)(3) and (5) of this section unless those records and reports are specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy.

SEC. 20. Research and Related Activities

29 USC 669

(a) (1) The Secretary of Health and Human Services, after consultation with the Secretary and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

(2) The Secretary of Health and Human Services shall from time to time consult with the Secretary in order to develop specific plans for such research, demonstrations, and experiments as are necessary to produce criteria, including criteria identifying toxic substances, enabling the Secretary to meet his responsibility for the formulation of safety and health standards under this Act; and the Secretary of Health and Human Services, on the basis of such research, demonstrations, and experiments and any other information available to him, shall develop and publish at least annually such criteria as will effectuate the purposes of this Act.

(3) The Secretary of Health and Human Services, on the basis of such research, demonstrations, and experiments, and any other information available to him, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience.

(4) The Secretary of Health and Human Services shall also conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that which is otherwise provided for in the operating provisions of this Act. The Secretary of Health and Human Services shall also conduct research into the motivational and behavioral factors relating to the field of occupational safety and health.

(5) The Secretary of Health and Human Services, in order to comply with his responsibilities under paragraph (2), and in order to develop needed information regarding potentially toxic substances or harmful physical agents, may prescribe regulations requiring employers to measure, record, and make reports on the exposure of employees to substances or physical agents which the Secretary of Health and Human Services reasonably believes may endanger the health or safety of employees. The Secretary of Health and Human Services also is authorized to establish such programs of medical examinations and tests as may be necessary for determining the incidence of occupational illnesses and the susceptibility of employees to such illnesses. Nothing in this or any other provision of this Act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. Upon the request of any employer who is required to measure and record exposure of employees to substances or physical agents as provided under this subsection, the Secretary of Health and Human Services shall furnish full financial or other assistance to such employer for the purpose of defraying any additional expense incurred by him in carrying out the measuring and recording as provided in this subsection.

(6) The Secretary of Health and Human Services shall publish within six months of enactment of this Act and thereafter as needed but at least annually a list of all known toxic substances by generic family or other useful grouping, and the concentrations at which such toxicity is known to occur. He shall determine following a written request by any employer or authorized representative of employees, specifying with reasonable particularity the grounds on which the request is made, whether any substance normally found in the place of employment has potentially toxic effects in such concentrations as used or found; and shall submit such determination both to employers and affected employees as soon as possible. If the Secretary of Health and Human Services determines that any substance is potentially toxic at the concentrations in which it is used or found in a place of employment, and such substance is not covered by an occupational safety or health standard promulgated under section 6, the Secretary of Health and Human Services shall immediately submit such determination to the Secretary, together with all pertinent criteria.

(7) Within two years of enactment of the Act, and annually thereafter the Secretary of Health and Human Services shall conduct and publish industry wide studies of the effect of chronic or low-level exposure to industrial materials, processes, and stresses on the potential for illness, disease, or loss of functional capacity in aging adults.

(b) The Secretary of Health and Human Services is authorized to make inspections and question employers and employees as provided in section 8 of this Act in order to carry out his functions and responsibilities under this section.

(c) The Secretary is authorized to enter into contracts, agreements, or other arrangements with appropriate public agencies or private organizations for the purpose of conducting studies relating to his responsibilities under this Act. In carrying out his responsibilities under this subsection, the Secretary shall cooperate with the Secretary of Health and Human Services in order to avoid any duplication of efforts under this section.

(d) Information obtained by the Secretary and the Secretary of Health and Human Services under this section shall be disseminated by the Secretary to employers and employees and organizations thereof.

(e) The functions of the Secretary of Health and Human Services under this Act shall, to the extent feasible, be delegated to the Director of the National Institute for Occupational Safety and Health established by section 22 of this Act.

EXPANDED RESEARCH ON WORKER SAFETY AND HEALTH

The Secretary of Health and Human Services (referred to in this section as the "Secretary"), acting through

the Director of the National Institute of Occupational Safety and Health, shall enhance and expand research as deemed appropriate on the health and safety of workers who are at risk for bioterrorist threats or attacks in the workplace, including research on the health effects of measures taken to treat or protect such workers for diseases or disorders resulting from a bioterrorist threat or attack. Nothing in this section may be construed as establishing new regulatory authority for the Secretary or the Director to issue or modify any occupational safety and health rule or regulation.

29 USC 669a

Pub. L. 107-188, Title I, § 153 added this text.

SEC. 21. Training and Employee Education

29 USC 670

(a) The Secretary of Health and Human Services, after consultation with the Secretary and with other appropriate Federal departments and agencies, shall conduct, directly or by grants or contracts –

(1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Act, and

(2) informational programs on the importance of and proper use of adequate safety and health equipment.

(b) The Secretary is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to his responsibilities under this Act.

(c) The Secretary, in consultation with the Secretary of Health and Human Services, shall –

(1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this Act, and

(2) consult with and advise employers and employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

Pub. L. 105-97, §2 added subsection (d). See Historical notes.

(d)

(1) The Secretary shall establish and support cooperative agreements with the States under which employers subject to this Act may consult with State personnel with respect to –

(A) the application of occupational safety and health requirements under this Act or under State plans approved under section 18; and

(B) voluntary efforts that employers may undertake to establish and maintain safe and healthful employment and places of employment. Such agreements may provide, as a condition of receiving funds under such agreements, for contributions by States towards meeting the costs of such agreements.

(2) Pursuant to such agreements the State shall provide on-site consultation at the employer's worksite to employers who request such assistance. The State may also provide other education and training programs for employers and employees in the State. The State shall ensure that on-site consultations conducted pursuant to such agreements include provision for the participation by employees.

(3) Activities under this subsection shall be conducted independently of any enforcement activity. If an employer fails to take immediate action to eliminate employee exposure to an imminent danger identified in a consultation or fails to correct a serious hazard so identified within a reasonable time, a report shall be made to the appropriate enforcement authority for such action as is appropriate.

(4) The Secretary shall, by regulation after notice and opportunity for comment, establish rules under which an employer--

(A) which requests and undergoes an on-site consultative visit provided under this subsection;

(B) which corrects the hazards that have been identified during the visit within the time frames established by the State and agrees to request a subsequent consultative visit if major changes in working conditions or work processes occur which introduce new hazards in the workplace; and

(C) which is implementing procedures for regularly identifying and preventing hazards regulated under this Act and maintains appropriate involvement of, and training for, management and non-management employees in achieving safe and healthful working conditions, may be exempt from an inspection (except an inspection requested under section 8(f) or an inspection to determine the cause of a workplace accident which resulted in the death of one or more employees or hospitalization for three or more employees) for a period of 1 year from the closing of the consultative visit.

(5) A State shall provide worksite consultations under paragraph (2) at the request of an employer. Priority in scheduling such consultations shall be assigned to requests from small businesses which are in higher hazard industries or have the most hazardous conditions at issue in the request.

SEC. 22. National Institute for Occupational Safety and Health

29 USC 671

(a) It is the purpose of this section to establish a National Institute for Occupational Safety and Health in the Department of Health and Human Services in order to carry out the policy set forth in section 2 of this Act and to perform the functions of the Secretary of Health and Human Services under sections 20 and 21 of this Act.

(b) There is hereby established in the Department of Health and Human Services a National Institute for Occupational Safety and Health. The Institute shall be headed by a Director who shall be appointed by the Secretary of Health and Human Services, and who shall serve for a term of six years unless previously removed by the Secretary of Health and Human Services.

(c) The Institute is authorized to –

(1) develop and establish recommended occupational safety and health standards; and

(2) perform all functions of the Secretary of Health and Human Services under sections 20 and 21 of this Act.

(d) Upon his own initiative, or upon the request of the Secretary of Health and Human Services, the Director is authorized (1) to conduct such research and experimental programs as he determines are necessary for the development of criteria for new and improved occupational safety and health standards, and (2) after consideration of the results of such research and experimental programs make recommendations concerning new or improved occupational safety and health standards. Any occupational safety and health standard recommended pursuant to this section shall immediately be forwarded to the Secretary of Labor, and to the Secretary of Health and Human Services.

(e) In addition to any authority vested in the Institute by other provisions of this section, the Director, in carrying out the functions of the Institute, is authorized to –

(1) prescribe such regulations as he deems necessary governing the manner in which its functions shall be carried out;

(2) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purposes of the Institute and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(3) receive (and use, sell, or otherwise dispose of, in accordance with paragraph (2)), money and other property donated, bequeathed, or devised to the Institute with a condition or restriction, including a condition that the Institute use other funds of the Institute for the purposes of the gift;

(4) in accordance with the civil service laws, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this section;

(5) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;

(7) enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this section, and such contracts or modifications thereof may be entered into without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), or any other provision of law relating to competitive bidding;

(8) make advance, progress, and other payments which the Director deems necessary under this title without regard to the provisions of section 3324 (a) and (b) of Title 31; and

(9) make other necessary expenditures.

Pub. L. 97-258

(f) The Director shall submit to the Secretary of Health and Human Services, to the President, and to the Congress an annual report of the operations of the Institute under this Act, which shall include a detailed statement of all private and public funds received and expended by it, and such recommendations as he deems appropriate.

(g) Lead-Based Paint Activities.

Pub. L. 102-550 added subsection (g).

(1) Training Grant Program.

(A) The Institute, in conjunction with the Administrator of the Environmental Protection Agency, may make grants for the training and education of workers and supervisors who are or may be directly engaged in lead-based paint activities.

(B) Grants referred to in subparagraph (A) shall be awarded to nonprofit organizations (including colleges and universities, joint labor-management trust funds, States, and nonprofit government employee organizations) –

(i) which are engaged in the training and education of workers and supervisors who are or who may be directly engaged in lead-based paint activities (as defined in Title IV of the Toxic Substances Control Act),

(ii) which have demonstrated experience in implementing and operating health and safety training and education programs, and

(iii) with a demonstrated ability to reach, and involve in lead-based paint training programs, target populations of individuals who are or will be engaged in lead-based paint activities. Grants under this subsection shall be awarded only to those organizations that fund at least 30 percent of their lead-based paint activities training programs from non-Federal sources, excluding in-kind

contributions. Grants may also be made to local governments to carry out such training and education for their employees.

(C) There are authorized to be appropriated, a minimum, $10,000,000 to the Institute for each of the fiscal years 1994 through 1997 to make grants under this paragraph.

(2) Evaluation of Programs. The Institute shall conduct periodic and comprehensive assessments of the efficacy of the worker and supervisor training programs developed and offered by those receiving grants under this section. The Director shall prepare reports on the results of these assessments addressed to the Administrator of the Environmental Protection Agency to include recommendations as may be appropriate for the revision of these programs. The sum of $500,000 is authorized to be appropriated to the Institute for each of the fiscal years 1994 through 1997 to carry out this paragraph.

WORKERS' FAMILY PROTECTION

29 USC 671a

(a) Short title

This section may be cited as the "Workers' Family Protection Act".

Pub. L. 102-522, Title II, §209 added this text.

(b) Findings and purpose

(1) Findings
Congress finds that--

(A) hazardous chemicals and substances that can threaten the health and safety of workers are being transported out of industries on workers' clothing and persons;

(B) these chemicals and substances have the potential to pose an additional threat to the health and welfare of workers and their families;

(C) additional information is needed concerning issues related to

employee transported contaminant releases; and

(D) additional regulations may be needed to prevent future releases of this type.

(2) Purpose
It is the purpose of this section to--

(A) increase understanding and awareness concerning the extent and possible health impacts of the problems and incidents described in paragraph (1);

(B) prevent or mitigate future incidents of home contamination that could adversely affect the health and safety of workers and their families;

(C) clarify regulatory authority for preventing and responding to such incidents; and

(D) assist workers in redressing and responding to such incidents when they occur.

(c) Evaluation of employee transported contaminant releases

(1) Study

(A) In general
Not later than 18 months after October 26, 1992, the Director of the National Institute for Occupational Safety and Health (hereafter in this section referred to as the "Director"), in cooperation with the Secretary of Labor, the Administrator of the Environmental Protection Agency, the Administrator of the Agency for Toxic Substances and Disease Registry, and the heads of other Federal Government agencies as determined to be appropriate by the Director, shall conduct a study to evaluate the potential for, the prevalence of, and the issues related to the contamination of workers' homes with hazardous chemicals and substances, including infectious agents, transported from the workplaces of such workers.

(B) Matters to be evaluated
In conducting the study and evaluation under subparagraph (A), the Director shall--

(i) conduct a review of past incidents of home contamination through the utilization of literature and of records concerning past investigations and enforcement actions undertaken by--

(I) the National Institute for Occupational Safety and Health;

(II) the Secretary of Labor to enforce the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.);

(III) States to enforce occupational safety and health standards in accordance with section 18 of such Act (29 U.S.C. 667); and

(IV) other government agencies (including the Department of Energy and the Environmental Protection Agency), as the Director may determine to be appropriate;

(ii) evaluate current statutory, regulatory, and voluntary industrial hygiene or other measures used by small, medium and large employers to prevent or remediate home contamination;

(iii) compile a summary of the existing research and case histories conducted on incidents of employee transported contaminant releases, including--

(I) the effectiveness of workplace housekeeping practices and personal protective equipment in preventing such incidents;

(II) the health effects, if any, of the resulting exposure on workers and their families;

(III) the effectiveness of normal house cleaning and laundry procedures for removing hazardous materials and agents from workers' homes and personal clothing;

(IV) indoor air quality, as the research concerning such pertains to the fate of chemicals transported from a workplace into the home environment; and

(V) methods for differentiating exposure health effects and relative risks associated with specific agents from other sources of exposure inside and outside the home;

(iv) identify the role of Federal and State agencies in responding to incidents of home contamination;

(v) prepare and submit to the Task Force established under paragraph (2) and to the appropriate committees of Congress, a report concerning the results of the matters studied or evaluated under clauses (i) through (iv); and

(vi) study home contamination incidents and issues and worker and family protection policies and practices related to the special circumstances of firefighters and prepare and submit to the appropriate committees of Congress a report concerning the findings with respect to such study.

(2) Development of investigative strategy

(A) Task Force
Not later than 12 months after October 26, 1992, the Director shall establish a working group, to be known as the "Workers' Family Protection Task Force". The Task Force shall--

(i) be composed of not more than 15 individuals to be appointed by the Director from among individuals who are representative of workers, industry, scientists, industrial hygienists, the National Research Council, and government agencies, except that not more than one such individual shall be from each appropriate government agency and the number of individuals appointed to represent industry and workers shall be equal in number;

(ii) review the report submitted under paragraph (1)(B)(v);

(iii) determine, with respect to such report, the additional data needs, if any, and the need for additional evaluation of the scientific issues related to and the feasibility of developing such additional data; and

(iv) if additional data are determined by the Task Force to be needed, develop a recommended investigative strategy for use in obtaining such information.

(B) Investigative strategy

(i) Content
The investigative strategy developed under subparagraph (A)(iv) shall identify data gaps that can and cannot be filled, assumptions and uncertainties associated with various components of such strategy, a timetable for the implementation of such strategy, and methodologies used to gather any required data.

(ii) Peer review
The Director shall publish the proposed investigative strategy under subparagraph (A)(iv) for public comment and utilize other methods, including technical conferences or seminars, for the purpose of obtaining comments concerning the proposed strategy.

(iii) Final strategy
After the peer review and public comment is conducted under clause
(ii), the Director, in consultation with the heads of other government agencies, shall propose a final strategy for investigating issues related to home contamination that shall be implemented by the National Institute for Occupational Safety and Health and other Federal agencies for the period of time necessary to enable such agencies to obtain the information identified under subparagraph (A)(iii).

(C) Construction
Nothing in this section shall be construed as precluding any government agency from investigating issues related to home contamination using existing procedures until such time as a final strategy is developed or from taking actions in addition to those proposed in the strategy after its completion.

(3) Implementation of investigative strategy
Upon completion of the investigative strategy under subparagraph (B)(iii), each Federal agency or department shall fulfill the role assigned to it by the strategy.

(d) Regulations

(1) In general
Not later than 4 years after October 26, 1992, and periodically thereafter, the Secretary of Labor, based on the information developed under subsection (c) of this section and on other information available to the Secretary, shall--

(A) determine if additional education about, emphasis on, or enforcement of existing regulations or standards is needed and will be sufficient, or if additional regulations or standards are needed with regard to employee transported releases of hazardous materials; and

(B) prepare and submit to the appropriate committees of Congress a report concerning the result of such determination.

(2) Additional regulations or standards If the Secretary of Labor determines that additional regulations or standards are needed under paragraph (1), the Secretary shall promulgate, pursuant to the Secretary's authority under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), such regulations or standards as determined to be appropriate not later than 3 years after such determination.

(e) Authorization of appropriations There are authorized to be appropriated from sums otherwise authorized to be appropriated, for each fiscal year such sums as may be necessary to carry out this section.

SEC. 23. Grants to the States

(a) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States which have designated a State agency under section 18 to assist them --

29 USC 672

(1) in identifying their needs and responsibilities in the area of occupational safety and health,

(2) in developing State plans under section 18, or

(3) in developing plans for --

(A) establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases;

(B) increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(C) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this Act.

(b) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in subsection (a) of this section.

(c) The Governor of the State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(d) Any State agency designated by the Governor of the State desiring a grant under this section shall submit an application therefor to the Secretary.

(e) The Secretary shall review the application, and shall, after consultation with the Secretary of Health and Human Services, approve or reject such application.

(f) The Federal share for each State grant under subsection (a) or (b) of this section may not exceed 90 per centum of the total cost of the application. In the event the Federal share for all States under either such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

(g) The Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary pursuant to section 18 of this Act. The Federal share for each State grant under this subsection may not exceed 50 per centum of the total cost to the State of such a program. The last sentence of subsection (f) shall be applicable in determining the Federal share under this subsection.

(h) Prior to June 30, 1973, the Secretary shall, after consultation with the Secretary of Health and Human Services, transmit a report to the President and to the Congress, describing the experience under the grant programs authorized by this section and making any recommendations he may deem appropriate.

SEC. 24. Statistics

(a) In order to further the purposes of this Act, the Secretary, in consultation with the Secretary of Health and Human Services, shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this Act but shall not cover employments excluded by section 4 of the Act. The Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical

treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(b) To carry out his duties under subsection (a) of this section, the Secretary may –

(1) promote, encourage, or directly engage in programs of studies, information and communication concerning occupational safety and health statistics;

(2) make grants to States or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics; and

(3) arrange, through grants or contracts, for the conduct of such research and investigations as give promise of furthering the objectives of this section.

(c) The Federal share for each grant under subsection (b) of this section may be up to 50 per centum of the State's total cost.

(d) The Secretary may, with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or political subdivision, with or without reimbursement, in order to assist him in carrying out his functions under this section.

(e) On the basis of the records made and kept pursuant to section 8(c) of this Act, employers shall file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under this Act.

(f) Agreements between the Department of Labor and States pertaining to the collection of occupational safety and health statistics already in effect on the effective date of this Act shall remain in effect until superseded by grants or contracts made under this Act.

SEC. 25. Audits

29 USC 674

(a) Each recipient of a grant under this Act shall keep such records as the Secretary or the Secretary of Health and Human Services shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary or the Secretary of Health and Human Services, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any grant under this Act that are pertinent to any such grant.

SEC. 26. Annual Report

29 USC 675 Pub. L. 104-66 §3003 terminated provision relating to transmittal of report to Congress.

Within one hundred and twenty days following the convening of each regular session of each Congress, the Secretary and the Secretary of Health and Human Services shall each prepare and submit to the President for transmittal to the Congress a report upon the subject matter of this Act, the progress toward achievement of the purpose of this Act, the needs and requirements in the field of occupational safety and health, and any other relevant information. Such reports shall include information regarding occupational safety and health standards, and criteria for such standards, developed during the preceding year; evaluation of standards and criteria previously developed under this Act, defining areas of emphasis for new criteria and standards; an evaluation of the degree of observance of applicable occupational safety and health standards, and a summary of inspection and enforcement activity undertaken; analysis and evaluation of research activities for which results have been obtained under governmental and nongovernmental sponsorship; an analysis of major occupational diseases; evaluation of available control and measurement technology for hazards for which standards or criteria have been developed during the preceding year; description of cooperative efforts undertaken between Government agencies and other interested parties in the implementation of this Act during the preceding year; a progress report on the development of an adequate supply of trained manpower in the field of occupational safety and health, including estimates of future needs and the efforts being made by Government and others to meet those needs; listing of all toxic substances in industrial usage for which labeling requirements, criteria, or standards have not yet been established; and such recommendations for additional legislation as are deemed necessary to protect the safety and health of the worker and improve the administration of this Act.

SEC. 27. National Commission on State Workmen's Compensation Laws

29 USC 676

(Text omitted.)

SEC. 28. Economic Assistance to Small Businesses

See notes on omitted text.

(Text omitted.)

SEC. 29. Additional Assistant Secretary of Labor

(Text omitted.)

SEC. 30. Additional Positions

See notes on omitted text.

(Text omitted.)

SEC. 31. Emergency Locator Beacons

(Text omitted.)

See notes on omitted text.

SEC. 32. Separability

See notes on omitted text.

If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

29 USC 677

SEC. 33. Appropriations

There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary.

29 USC 678

SEC. 34. Effective Date

This Act shall take effect one hundred and twenty days after the date of its enactment.

Approved December 29, 1970.

As amended through January 1, 2004.

Historical Notes

This reprint generally retains the section numbers originally created by Congress in the Occupational Safety and Health (OSH) Act of 1970, Pub. L. 91-596, 84 Stat 1590. This document includes some editorial changes, such as changing the format to make it easier to read, correcting typographical errors, and updating some of the margin notes. Because Congress enacted amendments to the Act since 1970, this version differs from the original version of the OSH Act. It also differs slightly from the version published in the United States Code at 29 U.S.C. 661 *et seq*. For example, this reprint refers to the statute as the "Act" rather than the "chapter."

This reprint reflects the provisions of the OSH Act that are in effect as of January 1, 2004. Citations to Public Laws which made important amendments to the OSH Act since 1970 are set forth in the margins and explanatory notes are included below.

NOTE: Some provisions of the OSH Act may be affected by the enactment of, or amendments to, other statutes. Section 17(h)(1), 29 U.S.C. 666, is an example. The original provision amended section 1114 of title 18 of the United States Code to include employees of "the Department of Labor assigned to perform investigative, inspection, or law enforcement functions" within the list of persons protected by the provisions to allow prosecution of persons who have killed or attempted to kill an officer or employee of the U.S. government while performing official duties. This reprint sets forth the text of section 17(h) as enacted in 1970. However, since 1970, Congress has enacted multiple amendments to 18 U.S.C. 1114. The current version does not specifically include the Department of Labor in a list; rather it states that "Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance shall be punished . . ." as provided by the statute. Readers are reminded that the official version of statutes can be found in the current volumes of the United States Code, and more extensive historical notes can be found in the current volumes of the United States Code Annotated.

Amendments

On January 2, 1974, section 2(c) of Pub. L. 93-237 replaced the phrase "7(b)(6)" in section 28(d) of the OSH Act with "7(b)(5)". 87 Stat. 1023. Note: The text of section 28 (Economic Assistance to Small Business) amended sections 7(b) and Section 4(c)(1) of the Small Business Act. Because these amendments are no longer current, the text of section 28 is omitted in this reprint. For the current version, see 15 U.S.C. 636.

In 1977, the U.S. entered into the Panama Canal Treaty of 1977, Sept. 7, 1977, U.S.-Panama, T.I.A.S. 10030, 33 U.S.T. 39. In 1979, Congress enacted implementing legislation. Panama Canal Act of 1979, Pub. L. 96-70, 93 Stat. 452 (1979). Although no corresponding amendment to the OSH Act was enacted, the Canal Zone ceased to exist in 1979. The U.S. continued to manage, operate and facilitate the transit of ships through the Canal under the authority of the Panama Canal Treaty until December 31, 1999, at which time authority over the Canal was transferred to the Republic of Panama.

On March 27, 1978, Pub. L. 95-251, 92 Stat. 183, replaced the term "hearing examiner(s)" with "administrative law judge(s)" in all federal laws, including sections 12(e), 12(j), and 12(k) of the OSH Act, 29 U.S.C. 661.

On October 13, 1978, Pub. L. 95-454, 92 Stat. 1111, 1221, which redesignated section numbers concerning personnel matters and compensation, resulted in the substitution of section 5372 of Title 5 for section 5362 in section 12(e) of the OSH Act, 29 U.S.C. 661.

On October 17, 1979, Pub. L. 96-88, Title V, section 509(b), 93 Stat. 668, 695, redesignated references to the Department of Health, Education, and Welfare to the Department of Health and Human Services and redesignated references to the Secretary of Health, Education, and Welfare to the Secretary of Health and Human Services.

On September 13, 1982, Pub. L. 97-258, §4(b), 96 Stat. 877, 1067, effectively substituted "Section 3324(a) and (b) of Title 31" for "Section 3648 of the Revised Statutes, as amended (31 U.S.C. 529)" in section 22 (e)(8), 29 U.S.C. 671, relating to NIOSH procurement authority.

On December 21, 1982, Pub. L. 97-375, 96 Stat. 1819, deleted the sentence in section 19(b) of the Act, 29 U.S.C. 668, that directed the President of the United States to transmit annual reports of the activities of federal agencies to the House of Representatives and the Senate.

On October 12, 1984, Pub. L. 98-473, Chapter II, 98 Stat. 1837, 1987, (commonly referred to as the "Sentencing Reform Act of 1984") instituted a classification system for criminal offenses punishable under the United States Code. Under this system, an offense with imprisonment terms of "six months or less but more than thirty days," such as that found in 29 U.S.C. 666(e) for a willful violation of the OSH Act, is classified as a crimina l "Class B misdemeanor." 18 U.S.C. 3559(a)(7).

The criminal code increases the monetary penalties for criminal misdemeanors beyond what is provided for in the OSH Act: a fine for a Class B misdemeanor resulting in death, for example, is not more than $250,000 for an individual, and is not more than $500,000 for an organization. 18 U.S.C. 3571(b)(4), (c)(4). The criminal code also provides for authorized terms of probation for both individuals and organizations. 18 U.S.C. 3551, 3561. The term of imprisonment for individuals is the same as that authorized by the OSH Act. 18 U.S.C. 3581(b)(7).

On November 8, 1984, Pub. L. 98-620, 98 Stat. 3335, deleted the last sentence in section 11(a) of the Act, 29 U.S.C. 660, that required petitions filed under the subsection to be heard expeditiously.

On November 5, 1990, Pub. L. 101-508, 104 Stat. 1388, amended section 17 of the Act, 29 U.S.C. 666, by increasing the penalties in section 17(a) from $10,000 for each violation to "$70,000 for each violation, but not less than $5,000 for each willful violation," and increased the limitation on penalties in sections (b), (c), (d), and (i) from $1,000 to $7,000.

On October 26, 1992, Pub. L. 102-522, 106 Stat. 3410, 3420, added to Title 29, section 671a "Workers' Family Protection" to grant authority to the Director of NIOSH to evaluate, investigate and if necessary, for the Secretary of Labor to regulate employee transported releases of hazardous material that result from contamination on the employee's clothing or person and may adversely affect the health and safety of workers and their families. Note: section 671a was enacted as section 209 of the Fire Administration Authorization Act of 1992, but it is reprinted here because it is codified within the chapter that comprises the OSH Act.

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102-550, 106 Stat. 3672, 3924, amended section 22 of the Act, 29 U.S.C. 671, by adding subsection (g), which requires NIOSH to institute a training grant program for lead-based paint activities.

On July 5, 1994, section 7(b) of Pub. L. 103-272, 108 Stat. 745, repealed section 31 of the OSH Act, "Emergency Locator Beacons." Section 1(e) of the same Public Law, however, enacted a modified version of section 31 of the OSH Act. This provision, titled "Emergency Locator Transmitters," is codified at 49 U.S.C. 44712.

On December 21, 1995, Section 3003 of Pub. L. 104-66, 109 Stat. 707, as amended, effective May 15, 2000, terminated the provisions relating to the transmittal to Congress of reports under section 26 of the OSH Act. 29 U.S.C. 675.

On July 16, 1998, Pub. L. 105-197, 112 Stat. 638, amended section 21 of the Act, 29 U.S.C. 670, by adding subsection (d), which required the Secretary to establish a compliance assistance program by which employers can consult with state personnel regarding the application of and compliance with OSHA standards.

On July 16, 1998, Pub. L. 105-198, 112 Stat. 640, amended section 8 of the Act, 29 U.S.C. 657, by adding subsection (h), which forbids the Secretary to use the results of enforcement activities to evaluate the employees involved in such enforcement or to impose quotas or goals.

On September 28, 1998, Pub. L. 105-241, 112 Stat. 1572, amended sections 3(5) and 19(a) of the Act, 29 U.S.C. 652 and 668, to include the United States Postal Service as an "employer" subject to OSHA enforcement.

On June 12, 2002, Pub. L. 107-188, Title I, Section 153, 116 Stat. 631, Congress enacted 29 U.S.C. 669a, to expand research on the "health and safety of workers who are at risk for bioterrorist threats or attacks in the workplace."

Jurisdictional Note

Although no corresponding amendments to the OSH Act have been made, OSHA no longer exercises jurisdiction over the entity formerly known as the Trust Territory of the Pacific Islands. The Trust Territory, which consisted of the Former

Japanese Mandated Islands, was established in 1947 by the Security Council of the United Nations, and administered by the United States. *Trusteeship Agreement for the Former Japanese Mandated Islands*, Apr. 2-July 18, 1947, 61 Stat. 3301, T.I.A.S. 1665, 8 U.N.T.S. 189.

From 1947 to 1994, the people of these islands exercised the right of self-determination conveyed by the Trusteeship four times, resulting in the division of the Trust Territory into four separate entities. Three entities: the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, became "Freely Associated States," to which U.S. Federal Law does not apply. Since the OSH Act is a generally applicable law that applies to Guam, it applies to the Commonwealth of Northern Mariana Islands, which elected to become a "Flag Territory" of the United States. *See Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America,* Article V, section 502(a) as contained in Pub. L. 94-24, 90 Stat. 263 (Mar. 24, 1976)[citations to amendments omitted]; 48 U.S.C. 1801 and note (1976); *see also Saipan Stevedore Co., Inc. v. Director, Office of Workers'Compensation Programs*, 133 F.3d 717, 722 (9th Cir. 1998)(Longshore and Harbor Workers' Compensation Act applies to the Commonwealth of Northern Mariana Islands pursuant to section 502(a) of the Covenant because the Act

has general application to the states and to Guam). For up-to-date information on the legal status of these freely associated states and territories, contact the Office of Insular Affairs of the Department of the Interior. (Web address: http://www.doi.gov/oia/)

Omitted Text. Reasons for textual deletions vary. Some deletions may result from amendments to the OSH Act; others to subsequent amendments to other statutes which the original provisions of the OSH Act may have amended in 1970. In some instances, the original provision of the OSH Act was date-limited and is no longer operative.

The text of section 12(c), 29 U.S.C. 661, is omitted. Subsection (c) amended sections 5314 and 5315 of Title 5, United States Code, to add the positions of Chairman and members of the Occupational Safety and Health Review Commission.

The text of section 27, 29 U.S.C. 676, is omitted. Section 27 listed Congressional findings on workers' compensation and established the National Commission on State Workmen's Compensation Laws, which ceased to exist ninety days after the submission of its final report, which was due no later than July 31, 1972.

The text of section 28 (Economic Assistance to Small Business) amended sections 7(b) and section 4(c)(1) of the Small Business Act to allow for small business loans in order to comply with applicable standards. Because these amendments are no longer current, the text is omitted here. For the current version see 15 U.S.C. 636.

The text of section 29, (Additional Assistant Secretary of Labor), created an Assistant Secretary for Occupational Safety and Health, and section 30 (Additional Positions) created additional positions within the Department of Labor and the Occupational Safety and Health Review Commission in order to carry out the provisions of the OSH Act. The text of these sections is omitted here because it no longer reflects the current statutory provisions for staffing and pay. For current
provisions, see 29 U.S.C. 553 and 5 U.S.C. 5108 (c).

Section 31 of the original OSH Act amended 49 U.S.C. 1421 by inserting a section entitled "Emergency Locator Beacons." The text of that section is omitted in this reprint because Pub. L. 103-272, 108 Stat.745, (July 5, 1994), repealed the text of section 31 and enacted a modified version of the provision, entitled "Emergency Locator Transmitters," which is codified at 49 U.S.C. 44712.

Notes on other legislation affecting the administration of the Occupational Safety and Health Act. Sometimes legislation does not directly amend the OSH Act, but does place requirements on the Secretary of Labor either to act or to refrain from acting under the authority of the OSH Act. Included below are some examples of such legislation. Please note that this is not intended to be a comprehensive list.

STANDARDS PROMULGATION.

For example, legislation may require the Secretary to promulgate specific standards pursuant to authority under section 6 of the OSH Act, 29 U.S.C. 655. Some examples include the following:

Hazardous Waste Operations. Pub. L. 99-499, Title I, section 126(a)-(f), 100 Stat. 1613 (1986), as amended by Pub. L. 100-202, section 101(f), Title II, section 201, 101 Stat. 1329 (1987), required the Secretary of Labor to promulgate standards concerning hazardous waste operations.

Chemical Process Safety Management. Pub. L. 101-549, Title III, section 304, 104 Stat. 2399 (1990), required the Secretary of Labor, in coordination with the Administrator of the Environmental Protection Agency, to promulgate a chemical process safety standard.

Hazardous Materials. Pub. L. 101-615, section 29, 104 Stat. 3244 (1990), required the Secretary of Labor, in consultation with the Secretaries of Transportation and Treasury, to issue specific standards concerning the handling of hazardous materials.

Bloodborne Pathogens Standard. Pub. L. 102-170, Title I, section 100, 105 Stat. 1107 (1991), required the Secretary of Labor to promulgate a final Bloodborne Pathogens standard.

Lead Standard. The Housing and Community Development Act of 1992, Pub. L. 102-550, Title X, sections 1031 and 1032, 106 Stat. 3672 (1992), required the Secretary of Labor to issue an interim final lead standard.

EXTENSION OF COVERAGE.

Sometimes a statute may make some OSH Act provisions applicable to certain entities that are not subject to those provisions by the terms of the OSH Act. For example, the Congressional Accountability Act of 1995, Pub. L. 104-1, 109 Stat. 3, (1995), extended certain OSH Act coverage, such as the duty to comply with Section 5 of the OSH Act, to the Legislative Branch. Among other provisions, this legislation authorizes the General Counsel of the Office of Compliance within the Legislative Branch to exercise the authority granted to the Secretary of Labor in the OSH Act to inspect places of employment and issue a citation or notice to correct the violation found. This statute does not make all the provisions of the OSH Act applicable to the Legislative Branch. Another example is the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Title IX, Section 947, Pub. L. 108-173, 117 Stat. 2066 (2003), which requires public hospitals not otherwise subject to the OSH Act to comply with OSHA's Bloodborne Pathogens standard, 29 CFR 1910.1030. This statute provides for the imposition and collection of civil money penalties by the Department of Health and Human Services in the event that a hospital fails to comply with OSHA's Bloodborne Pathogens standard.

PROGRAM CHANGES ENACTED THROUGH APPROPRIATIONS LEGISLATION.

Sometimes an appropriations statute may allow or restrict certain substantive actions by OSHA or the Secretary of Labor. For example, sometimes an appropriations statute may restrict the use of money appropriated to run the Occupational Safety and Health Administration or the Department of Labor. One example of such a restriction, that has been included in OSHA's appropriation for many years, limits the applicability of OSHA requirements with respect to farming operations that employ ten or fewer workers and do not maintain a temporary labor camp. Another example is a restriction that limits OSHA's authority to conduct certain enforcement activity with respect to employers of ten or fewer employees in low hazard industries. See Consolidated Appropriations Act, 2004, Pub. L. 108-199, Div. E - Labor, Health and Human Services, and Education, and Related

Agencies' Appropriations, 2004, Title I - Department of Labor, 118 Stat. 3 (2004). Sometimes an appropriations statute may allow OSHA to retain some money collected to use for occupational safety and health training or grants. For example, the Consolidated Appropriations Act, 2004, Div. E, Title I, cited above, allows OSHA to retain up to $750,000 of training institute course tuition fees per fiscal year for such uses. For the statutory text of currently applicable appropriations provisions, consult the OSHA appropriations statute for the fiscal year in question.

EXIBIT #13

All About OSHA®

Occupational Safety and Health Administration
U.S. Department of Labor
www.osha.gov

OSHA 3302-01R 2020

This booklet provides a general overview of basic topics related to OSHA and how it operates. Information provided does not determine compliance responsibilities under OSHA standards or the *Occupational Safety and Health Act of 1970* (OSH Act).

Because interpretations and enforcement policy may change over time, you should consult the agency for the most up-to-date information. Much of it is available at the OSHA website at www.osha.gov. The website also includes locations and phone numbers for OSHA offices around the country. If you do not have access to the website, call 1-800-321-OSHA (6742). This information is available to sensory-impaired individuals upon request. Voice phone: (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

OSHA®
www.osha.gov

Cover photo: Steve Baranowski, Braintree, Massachusetts Area Office

All About **OSHA**

U.S. Department of Labor

Occupational Safety and Health Administration

OSHA 3302-01R 2020

U.S. Department of Labor

OSHA®

Contents

In 1970, the United States Congress and President Richard Nixon created the Occupational Safety and Health Administration (OSHA), a national public health agency dedicated to the basic proposition that no worker should have to choose between their life and their job.

Passed with bipartisan support, the creation of OSHA was a historic moment of cooperative national reform. The OSHA law makes it clear that the right to a safe workplace is a basic human right.

Since OSHA's first day on the job, the agency has delivered remarkable progress for our nation. Workplace injuries, illnesses and fatalities have fallen dramatically. Together with our state partners, OSHA has tackled fatal safety hazards and health risks. We have established common sense standards and enforced the law against those who put workers at risk. Our standards, enforcement actions, compliance assistance and cooperative programs have saved thousands of lives and prevented countless injuries and illnesses.

Looking to the future, OSHA is committed to protecting workers from toxic chemicals and fatal safety hazards at work, ensuring that vulnerable workers in high-risk jobs have access to critical information and education about job hazards, and providing employers with vigorous compliance assistance to promote best practices that can save lives.

Although our task is far from complete, our progress gives us hope and confidence that OSHA will continue to make a lasting difference in the lives of our nation's workers, their families and their communities.

EXIBIT #24

Indoor Air Quality

Frequently Asked Questions
Schools
Building Operations and Management
Additional Resources

Schools

Indoor air quality (IAQ) is a concern in many schools due in part to the age and poor condition of a number of school buildings. School IAQ is particularly important as it may affect the health, performance and comfort of school staff and students.

Managing IAQ in schools presents unique challenges. Unlike managing other building, managing schools involves the responsibility for public funds and child safety issues. In addition, occupants are close together. Typical schools have approximately four times as many occupants as an office building with the same amount of floor space. Schools frequently have a large number of heating, ventilating, and air-conditioning equipment, which places added strain on maintenance staff. As schools add space, the operation and maintenance of each addition are often different. Schools sometimes use rooms, portable classrooms, or buildings that were not originally designed to service the unique requirements of schools.

Employees who work for state and local governments are not covered by federal OSHA, but have OSH Act protections if they work in those states that have an OSHA-approved state program. Four additional states (Connecticut, Illinois, New Jersey, New York) and one U.S. territory (Virgin Islands) have OSHA approved plans that cover public sector employees. Private sector employees in these four states and the Virgin Islands are covered by federal OSHA. For more information on State OSHA plans, see State Occupational Safety and Health Plans.

The EPA addresses IAQ concerns in its "Healthy Schools" programs and provides tools to assess and fix IAQ problems. For instance, EPA's IAQ Tools for Schools provides practical approaches to improving indoor air problems. The National Institute of Occupational Safety and Health (NIOSH) developed a series of safety checklists for schools, including an IAQ self-inspection checklist. Below are links to a number of websites on indoor air quality and schools, including the EPA and NIOSH resources.

Environmental Protection Agency (EPA):

- Creating Healthy Indoor Environments in Schools
  - *IAQ Tools for Schools* Action Kit. Includes many guidance documents, including ones about inspections, maintenance, ventilation, renovation.
    - Typical Indoor Air Pollutants.
- School Advanced Ventilation Engineering Software (SAVES). Free software package for architects, engineers, and school officials to determine what type of ventilation equipment is best for both health and energy efficiency; the software also has financial assessment and indoor humidity modules.

National Institute for Occupational Safety and Health (NIOSH):

- Safety Checklist Program for Schools
- Indoor Air Quality Self-Inspection Checklist for Schools

Other Resources:

- The American Federation of Teachers has a number of Fact Sheets on health and safety issues, including What You Should Know About Indoor Air Quality.
- School Indoor Air Quality Best Management Practices Manual. Washington State Department of Health, (November 2003).
- The New Jersey Department of Health and Senior Services (NJDHSS) provides useful information for school staff, school administrators, architects and engineers and parents.

Strategies for Protecting K-12 School Staff from COVID-19

Find the latest information:

Guidance for COVID-19 Prevention in K-12 Schools

Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace

On this Page

The information on this page provides an expanded focus on the health and safety of K-12 school staff. The strategies also provide workplace safety and health

Vaccine Toolkits for

the specific hazards and exposures associated with each position.
    - Create small working groups or teams that can assess group-specific hazards and report back to the larger assessment team.
- Assemble health and safety working groups with employee and management representatives, from both the district and school levels, to assist with developing, implementing, and evaluating a health and safety plan and adjusting accordingly.
    - Work closely with occupational health and safety and/or occupational medical professionals, when possible.
    - Include representatives of authorized unions, if applicable.
- Conduct a thorough hazard assessment to determine if workplace hazards are present, or are likely to be present, and determine what type of controls or PPE are needed for specific job duties. For more information on conducting a hazard assessment, please refer to the Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19).
- Collect information regularly through a variety of channels (e.g., email, electronic surveys, virtual meetings, focus groups) to reach a wider cross-section of staff, and elicit deeper, more informative responses.

See the OSHA COVID-19 webpage for more information on how to protect workers from potential COVID-19 exposures. Guidance may also be available from state, local, or professional technical organizations. For example, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has published Reopening Guide for Schools and Universities which includes useful plans and checklists to prepare buildings for occupancy and check on equipment and systems, as well as maintenance plans and checks during the academic year.

Strategies for Controlling COVID-19 Exposures

Infection prevention recommendations for staff and students are based on an approach known as the hierarchy of controls. This approach groups actions by their effectiveness in reducing or removing hazards. In most cases, the preferred approach is for management to:

1. Reduce the risk of COVID-19 by having teachers, staff, and students stay home when sick or if they have been in close contact with a person with COVID-19. Monitor COVID-19 transmission rates in the immediate community and in the communities in which students, teachers, and staff live. Work collaboratively with local health officials to determine if temporary school closure is necessary.
2. Install engineering controls, including modifying work areas using physical barriers, incorporating required accessibility requirements, and improving ventilation, where feasible.
3. Establish administrative controls and safe work practices for all staff to follow, which include appropriate cleaning and disinfection practices and appropriate mask policies.
4. Provide PPE in accordance with the school administrator's worksite hazard assessment to protect staff from hazards not controlled by engineering and administrative controls alone (e.g., school health staff, janitorial and maintenance staff).

Reducing the risks of COVID-19 in K-12 school worksites

K-12 school administration, particularly in areas where community spread of COVID-19 is occurring, should develop and implement a comprehensive strategy aimed at preventing the introduction of COVID-19 into school facilities. Please refer to the CDC Preparing K-12 School Administrators for a Safe Return to School page for more information.

Strategies for reducing the spread of COVID-19 in schools include educating and training staff on at-home symptom screening (e.g., fever, cough, sore throat) and cooperating with federal and local health officials, including to facilitate contact tracing, if exposures or infections warrant.

Screening K-12 school staff for COVID-19

Given the wide range of symptoms and the fact that some people with COVID-19 are presymptomatic or

asymptomatic, there are limitations to symptom screening for the identification of COVID-19. CDC does not currently recommend that schools conduct universal in-person symptom screenings. Refer to Screening K-12 Students for Symptoms of COVID-19: Limitations and Considerations for more information on screening students. Information about screening employees can be found on the General Business Frequently Asked Questions page. One option is to encourage staff to self-screen prior to coming onsite.

Testing of K-12 school staff

CDC does not recommend universal testing of all students and staff. CDC's Interim Considerations for K-12 School Administrators for SARS-CoV-2 Testing advises that schools should determine, in collaboration with local health officials, whether to implement any testing strategy and, if so, how to best do so. School administrators are encouraged to review SARS-CoV-2 Testing Strategy: Considerations for Non-Healthcare Workplaces when considering testing of all school employees.

Managing sick staff

When school staff or students report or have symptoms (e.g., fever, cough, sore throat) upon arrival at work or become sick during the day, school administrators should:

- Immediately separate the person(s) from others at the school. Individuals who are sick should immediately go home or to a healthcare facility depending on how severe their symptoms are, and follow CDC guidance for caring for oneself and others who are sick.
- Actively encourage staff and students who are sick, or who have recently had close contact with a person with COVID-19, to get tested and stay home.
- Develop policies that encourage sick staff to stay at home but without fear of retaliation, and ensure employees are aware of these policies.
- Identify an isolation area to separate anyone who has COVID-19 symptoms and potential exposure, ideally with a dedicated restroom not used by others. Note: Considerations for screening and management of symptoms for adults may be different than those for K-12 students. Additional considerations related to screening teachers and staff can be found on the General Business FAQ page.
- Ensure that personnel managing sick employees or students are appropriately protected from exposure. See What Healthcare Personnel Should Know About Caring for Patients with Confirmed or Possible COVID-19 Infection.
  - Only designated, trained staff should interact with people showing symptoms of COVID-19. At least one designated, trained staff member should be available at all times in case there is a need to isolate a symptomatic employee or student.
  - When providing care for anyone with suspected or confirmed SARS-CoV-2 infection, personnel who need to be within 6 feet of a sick colleague or student should be provided appropriate PPE (including gloves, a gown, a face shield or goggles, and an N95 or equivalent or higher-level respirator or a surgical facemask if a respirator is not available), and follow Standard and Transmission-Based Precautions.
  - If respirators are needed, they must be used in the context of a comprehensive respiratory protection program that includes medical exams, fit testing, and training in accordance with OSHA's Respiratory Protection standard (29 CFR 1910.134).
    - If the district has health and safety professional/s, work with them to establish a respiratory protection program; if not, professional organizations, such as the American Industrial Hygiene Association (AIHA) and the American Society of Safety Professionals (ASSP), maintain lists of health and safety consultants across the U.S. who may be able to assist with implementing a respiratory protection program.
    - The OSHA Respiratory Protection website provides links to a variety of guidance documents, web pages, and online tools related to respiratory protection.
- On-site healthcare services staff, including school nurses, should follow appropriate CDC and OSHA guidance for healthcare and emergency response personnel. For additional information, refer to the **Special Considerations – School nurses/health professionals** section below.
- Have a procedure in place for the safe and accessible transport of an employee who becomes sick while at work. The employee may need to be transported home or to a healthcare provider.

- If a school staff member is confirmed to have COVID-19, contact the local public health authorities about contact tracing.
  - Maintain the sick employee's confidentiality, as required by the Americans with Disabilities Act (ADA) and other applicable federal and state laws. Instruct fellow staff about how to proceed based on the CDC Public Health Recommendations for Community-Related Exposure.
- If a school staff member becomes or reports being sick, clean and disinfect the work area and any shared common areas (including restrooms) and any supplies, tools, or equipment handled by that staff member.
- Work with local health officials to facilitate the identification of other exposed and potentially exposed individuals, such as coworkers or students, in the school.
- Students, teachers, and staff who test positive or had close contact with an individual who tested positive for SARS-CoV-2 should be provided with guidance for when it is safe to discontinue self-isolation or end quarantine.

Engineering controls

Increasing ventilation

Consider steps to increase the delivery of clean air and dilute potential contaminants. Not all steps are applicable for all scenarios. Consult with experienced HVAC professionals when considering changes to HVAC systems and equipment. Some of these recommendations are based on ASHRAE Guidance for Building Operations During the COVID-19 Pandemic. Review additional ASHRAE guidelines for schools and universities for further information on ventilation recommendations for different types of buildings and building readiness for occupancy.

Improvement steps may include some, or all, of the following activities:

- Increase outdoor air ventilation, using caution when outdoor air quality is low.
  - When weather conditions allow, increase fresh outdoor air by opening windows and doors. Do not open windows and doors if doing so poses a safety or health risk (e.g., risk of falling, triggering asthma symptoms) to children and staff using the school.
  - Consider outdoor classes where circumstances allow.
  - Use fans to increase the effectiveness of open windows. Position fans securely and carefully in/near windows so as not to induce potentially contaminated airflow directly from one person over another (strategic window fan placement in exhaust mode can help draw fresh air into the room via other open windows and doors without generating strong room air currents).
  - Decrease occupancy in areas where outdoor ventilation cannot be increased.
- Ensure ventilation systems operate properly and provide acceptable indoor air quality as defined by ASHRAE Standard 62.1, *Ventilation for Acceptable Indoor Air Quality*, for the current occupancy level for each space.
- Increase total airflow supply to occupied spaces, whenever feasible.
- Disable demand-controlled ventilation (DCV) controls that reduce air supply based on occupancy or temperature during occupied hours.
- Further open minimum outdoor air dampers to reduce or eliminate HVAC air recirculation, if practical. In mild weather, this will not affect thermal comfort or humidity. However, this may be difficult to do in cold, hot, or humid weather.
- Improve central air filtration:
  - Increase air filtration to as high as possible without significantly diminishing design.
  - Inspect filter housing and racks to ensure appropriate filter fit and check for ways to minimize filter bypass.
  - Check filters to ensure they are within service life and appropriately installed.
- Consider running the HVAC system at maximum outside airflow for 2 hours before and after occupied times.
- Ensure restroom exhaust fans are functional and operating at full capacity when the building is

Consider ventilation system upgrades or improvements and other steps to increase the delivery of clean air and dilute potential contaminants in the building. Learn More.

Always follow standard practices and appropriate regulations specific to your school for minimum standards for cleaning and disinfection. For more information on cleaning various surfaces and other cleaning guidelines, see Cleaning and Disinfecting Your Facility.

Integrating Cleaning into the Daily Plan

Staff and Scheduling

- **Plan with staff and teachers.** Discuss obstacles to routine cleaning and ways to overcome those obstacles.
- **Develop a schedule for routine cleaning.** Modify your standard procedures to accommodate regularly cleaning at least once a day or as often as needed.

High touch Surfaces and Objects

- **Clean high touch surfaces and objects** (such as, door handles, sink handles, drinking fountains) within the school and on school transport vehicles (such as, buses) at least once a day or as often as needed (for example, when visibly dirty).
- **Limit sharing of high touch objects that are difficult to regularly clean** (such as, electronic devices, pens, pencils, books, games, art supplies, lab equipment).
  - If certain conditions apply (such as, low mask usage or high community transmission), do not use difficult-to-clean shared objects for 72 hours.
  - If items need to be reused within 24 hours they should be disinfected.
- Staff should wash hands after removing gloves or after handling used items or other objects near students who are unmasked.
- **Regularly (at least once a day or as often as needed) clean surfaces** using soap or detergent.
- If choosing to disinfect, ensure safe and correct use and storage of cleaning products, including storing products securely away from children.
- Use gloves when removing garbage bags or handling and disposing trash.
- Wash hands after removing gloves.

Soiled Surfaces

- **Immediately clean surfaces and objects that are visibly soiled.**
  - Use soap or detergent to clean these surfaces or objects.
  - If choosing to disinfect, dirty surfaces should be cleaned before disinfection.
- If surfaces or objects are **soiled with body fluids or blood**, use gloves and other standard precautions to avoid coming into contact with the fluid.
  - Contain and remove the spill, and then clean and disinfect the surface.

Personal protective equipment (PPE)

Employers are responsible for providing a safe and healthy workplace. Conduct a thorough hazard assessment of the school worksite to identify potential workplace hazards related to COVID-19. When engineering and administrative controls cannot be implemented or are not fully protective, employers are required by OSHA standards (29 CFR part 1910, Subpart I) to:

- Determine what PPE is needed for their specific job duties (e.g., school nurses or other health services staff performing job tasks that expose them to chemicals or particulate matter).
  - For example, some school staff need PPE in order to perform their jobs safely, such as janitorial and maintenance staff.
  - Masks are not PPE.
- Select and provide appropriate PPE to staff at no cost, if required.
  - Some barriers may offer better protection for a variety of chemicals. More information on

recommended barriers for common disinfectants can be located at the CDC Hazard Communication for Disinfectants Used Against Viruses. Always review the label on the product before use and follow manufacturers' recommendations in the product's safety data sheet.

- Train their staff on hazard identification and correct use (including putting on and removing) of PPE.

When respirators are not required to protect workers, employers may consider allowing voluntary use of filtering facepiece respirators (such as N95s) if staff wish to provide and use such equipment on their own. Owners and operators who allow voluntary use of respirators should ensure they comply with the voluntary use provisions of the OSHA Respiratory Protection standard (29 CFR 1910.134).

In light of potential PPE shortages, administrators should consider modifying staff and student interaction and use the suggested engineering and administrative controls, mentioned above, as primary prevention and control measures that reduce the need for PPE. See the Special Considerations section for information on limited circumstances in which PPE for K-12 staff may be necessary.

Supporting Teacher and Staff Mental Health and Well-Being

To protect and support the mental health of K-12 teachers and staff during the COVID-19 pandemic, administrators should consider these options:

- **Provide mental health benefits.** Circulate information about your district's Employee Assistance Plan and any mental health and counseling services that are available. Remind staff what mental health benefits are included in their insurance plans.
- **Implement flexible sick leave policies and practices.** Each staff member's life outside of work is different. Many have caregiving responsibilities and may need to provide care for ill loved ones, oversee virtual learning, and/or arrange child- or elder-care during a time when access to such care may be limited. Be understanding and flexible with leave policies and work schedules as circumstances change and needs arise.
- **Evaluate changes to work design.** Eliminate non-essential tasks so staff can focus on the critical ones. Reduce ambiguity by providing necessary resources and guidance for how to instruct and carry out job tasks under changing circumstances. Give staff more control over how they carry out work tasks.
- **Support coping and resilience.** Encourage teachers and school staff to take breaks from watching, reading, or listening to news stories about COVID-19, including social media, if they are feeling overwhelmed or distressed. Encourage employees to talk with people they trust about their concerns and how they are feeling. Consider posting signage for the Disaster Distress Helpline: call or text 1-800-985-5990.
- **Foster wellness.** Consider holding all-staff meetings that focus on mental health awareness, if facilities allow for appropriate social distancing. If you educate staff about mental health and encourage open conversation about the challenges people are experiencing, employees may be more likely to access care when needed. If you have access to a wellness provider, consider hosting virtual mindfulness or discussion sessions. Consider the importance of healthy sleep. Staff can also serve as valuable resources to one another by sharing strategies for coping with the pandemic.
- **Connect.** If remote work is necessary, remember that physical distance does not have to mean socially distant. Using virtual platforms to continue team building and staff meetings can be good for morale by fostering a sense of community and togetherness and easing feelings of loneliness. Be inclusive; provide opportunities for staff, at all levels, in all departments, to participate in these interactions.
- **Provide training.** Consider that staff members may have different levels of ability with using virtual platforms and new learning technologies. Offer training and technical support for new job demands may help to reduce stress.
- **Model healthy behavior.** Encourage all school leaders to take care of their own physical, social, and psychological needs. By doing so, they serve as role models and set the tone that it is acceptable and necessary to take care of oneself.

EXIBIT #11

Department of Education

August 22, 2022

PAULA SMITH
[redacted]

Employee ID# [redacted]
Dear PAULA SMITH,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.

To provide proof of vaccination by these dates, please take the following steps:

- Send an email to VaccineMandateTermination@schools.nyc.gov
- Put your name and Employee ID# in the subject line (your Employee ID# is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources

NYC Department of Education

August 22, 2022

ROSEANNA MUSTACCHIA
[redacted]

Employee ID [redacted]
Dear ROSEANNA MUSTACCHIA,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.

To provide proof of vaccination by these dates, please take the following steps:

- *Send an email to* VaccineMandateTermination@schools.nyc.gov
- *Put your name and* Employee ID # in the subject line (your Employee ID # is found under *your address on the top of this page)*
- *Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record*
- *You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.*

Thank you,

NYC Department of Education Division of Human Resources

NYC Department of Education

August 22, 2022

JESSICA CSEPKU
[redacted]

Employee ID #: [redacted]
Dear JESSICA CSEPKU,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.

To provide proof of vaccination by these dates, please take the following steps:

- Send an email to VaccineMandateTermination@schools.nyc.gov
- Put your name and Employee ID # in the subject line (your Employee ID # is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources

NYC Department of Education

August 22, 2022

REMO DELLO IOIO
[redacted]

Employee ID [redacted]
Dear REMO DELLO IOIO,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.

To provide proof of vaccination by these dates, please take the following steps:

- Send an email to VaccineMandateTermination@schools.nyc.gov
- Put your name and Employee ID # in the subject line (your Employee ID # is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources

sanitation

Jessica S. Tisch Commissioner

Adil Tahir
Executive Director
Human Resources

59 Maiden Lane
5th Floor
New York, NY 10038
nyc.gov/sanitation

646-885-1081
Adtahir@dsny.nyc.gov

June 17, 2022

VIA OVERNIGHT MAIL

Bruce Reid
[redacted]

Re: NYC COVID-19 Vaccine Mandate: Option for Reinstatement

Dear: Bruce Reid

As of February 11, 2022 you were terminated from your employment with the City of New York, Department of Sanitation.

The Department of Sanitation would like to offer you the opportunity to return to employment if you become fully vaccinated, provided that you share a copy of your vaccination record and submit proof of at least the first dose by close of business on Thursday, June 30th, and the second dose by August 15th. Compliance with this requirement is a condition of your return to employment with the City. Once you provide proof of full vaccination (both doses), you will be reinstated to your civil service title at your most recent salary within two weeks of submission of proof of full vaccination, with no change to benefits or break in service.

If you wish to resume employment with the City of New York, you must provide proof of receipt of at least one dose of the vaccine by close of business on June 30th, 2022.

To submit proof of vaccination, please use the portal below and/or contact the COVID-19 Hotline at (212) 437-4655.

COVID-19 Vaccination Submission Portal
https://www1.nyc.gov/assets/dsny/site/contact/covid-19-vaccine-registration

For information regarding where to get vaccinated, please visit the NYC COVID-19 and Flu Vaccine Finder:
https://vaccinefinder.nyc.gov.

NYC Department of Education

August 22, 2022

CHARISSE RIDULFO
[redacted]

Employee ID # [redacted]
Dear CHARISSE RIDULFO,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.

To provide proof of vaccination by these dates, please take the following steps:

- Send an email to VaccineMandateTermination@schools.nyc.gov
- Put your name and Employee ID # in the subject line (your Employee ID # is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources

Department of Education

August 22, 2022

EVELYN ZAPATA
[redacted]

Employee ID # [redacted]
Dear EVELYN ZAPATA,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.

To provide proof of vaccination by these dates, please take the following steps:

- Send an email to VaccineMandateTermination@schools.nyc.gov
- Put your name and Employee ID # in the subject line (your Employee ID # is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources

NYC Department of Education

August 22, 2022

MARITZA ROMERO
[redacted]

Employee ID # [redacted]
Dear MARITZA ROMERO,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.

To provide proof of vaccination by these dates, please take the following steps:

- Send an email to VaccineMandateTermination@schools.nyc.gov
- Put your name and Employee ID # in the subject line (your Employee ID # is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources

NYC Department of Education

August 22, 2022

MARK MAYNE
[redacted]

Employee ID #: [redacted]
Dear MARK MAYNE,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.

To provide proof of vaccination by these dates, please take the following steps:

- *Send an email to VaccineMandateTermination@schools.nyc.gov*
- *Put your name and Employee ID # in the subject line (your Employee ID # is found under your address on the top of this page)*
- *Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record*
- *You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.*

Thank you,

NYC Department of Education Division of Human Resources

65-2

An Official Communication
from the Uniformed Firefighters Association

#54 of 2022 • June 17th

204 East 23rd Street, New York, NY 10010 • Tel: 212-683-4832 • Fax: 212-683-0710 • www.ufanyc.org
Follow us on Twitter: @ufanyc Facebook: @ufanyc Instagram: @fdny_ufa

Employment Reinstatement

The UFA has been notified that the City will be offering employees who were previously terminated under the Vaccine Mandate the opportunity to be reinstated if they receive their first dose of the vaccine by June 30, 2022, and then get the second dose needed to be considered fully vaccinated within 45 days of the first dose. Members will be reinstated on payroll if they are fully vaccinated by August 15, 2022.

The City has advised us that members will be reinstated to their full civil service title and salary with no change in benefits or break in service upon providing proof of full vaccination.

Proof of receipt of at least one dose must be received by the Department no later than June 30, 2022. Proof of vaccination should be submitted via email to HRVaxProof@fdny.nyc.gov.

Fraternally,

Vincent Speciale
Recording Secretary

Andrew Ansbro
President

- Website www.UFANYC.org
- Send 65-2 info to 652@UFANYC.org
- Health/Safety concerns to HealthandSafety@UFANYC.org

ALWAYS CALL to verify your email was received!!!

They are now bribing firefighters who were already terminated, with the chance to be reinstated IF they get their first dose of the poison potion by June 30th.

NYC Department of Education

August 22, 2022

SARA COOMBS
[redacted]

Employee ID #: [redacted]
Dear SARA COOMBS,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.

To provide proof of vaccination by these dates, please take the following steps:

- Send an email to VaccineMandateTermination@schools.nyc.gov
- Put your name and Employee ID # in the subject line (your Employee ID # is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources

sanitation

Jessica S. Tisch Commissioner

Adil Tahir
Executive Director
Human Resources

59 Maiden Lane
5th Floor
New York, NY 10038
nyc.gov/sanitation

646-885-1081
Adtahir@dsny.nyc.gov

June 17, 2022

VIA OVERNIGHT MAIL

Joseph Rullo
[redacted]

Re: NYC COVID-19 Vaccine Mandate: Option for Reinstatement

Dear: Joseph Rullo

As of February 11, 2022 you were terminated from your employment with the City of New York, Department of Sanitation.

The Department of Sanitation would like to offer you the opportunity to return to employment if you become fully vaccinated, provided that you share a copy of your vaccination record and submit proof of at least the first dose by close of business on Thursday, June 30th, and the second dose by August 15th. Compliance with this requirement is a condition of your return to employment with the City. Once you provide proof of full vaccination (both doses), you will be reinstated to your civil service title at your most recent salary within two weeks of submission of proof of full vaccination, with no change to benefits or break in service.

If you wish to resume employment with the City of New York, you must provide proof of receipt of at least one dose of the vaccine by close of business on June 30th, 2022.

To submit proof of vaccination, please use the portal below and/or contact the COVID-19 Hotline at (212) 437-4655.

COVID-19 Vaccination Submission Portal
https://www1.nyc.gov/assets/dsny/site/contact/covid-19-vaccine-registration

For information regarding where to get vaccinated, please visit the NYC COVID-19 and Flu Vaccine Finder:
https://vaccinefinder.nyc.gov.

POLICE DEPARTMENT
Human Resources Division
Administrative Unit
One Police Plaza, 10th Floor
New York, NY 10038

June 17, 2022

Sonia Hernandez
[redacted]

Dear Sonia Hernandez:

As of March 19, 2022 you were terminated from your employment with the New York City Police Department.

The New York City Police Department would like to offer you the opportunity to return to employment if you become fully vaccinated, provided that you email a copy of your vaccination record to the New York City Police Department at meoleave@nypd.org indicating that you have received or will receive at least the first dose by close of business on **Thursday, June 30, 2022**, and that you intend to receive the second dose by **Monday, August 15, 2022**. Compliance with this requirement is a condition of your return to employment with the City. Once you provide proof of full vaccination (both doses), you will be reinstated to your civil service title at your most recent salary within two weeks of submission of proof of full vaccination, with no change to benefits or break in service.

If you wish to resume employment with the City of New York, you must provide proof of receipt of at least one dose of the vaccine by close of business on **Thursday, June 30, 2022**.

For information regarding where to get vaccinated, please visit: https://vaccinefinder.nyc.gov

For questions regarding this matter, please contact the Personnel Bureau at 646-610-5878 or meoleave@nypd.org

Sincerely,

Marisa Caggiano

Marisa Caggiano
Assistant Commissioner
Human Resources Division

EXIBIT #12

Healthcare

Culture of Safety
Infectious Diseases
Safe Patient Handling
Workplace Violence
Other Hazards
Standards

Workers' Rights

Infectious Diseases

Healthcare workers (HCWs) are occupationally exposed to a variety of infectious diseases during the performance of their duties. The delivery of healthcare services requires a broad range of workers, such as physicians, nurses, technicians, clinical laboratory workers, first responders, building maintenance, security and administrative personnel, social workers, food service, housekeeping, and mortuary personnel. Moreover, these workers can be found in a variety of workplace settings, including hospitals, nursing care facilities, outpatient clinics (e.g., medical and dental offices, and occupational health clinics), ambulatory care centers, and emergency response settings. The diversity among HCWs and their workplaces makes occupational exposure to infectious diseases especially challenging. For example, not all workers in the same healthcare facility, not all individuals with the same job title, and not all healthcare facilities will be at equal risk of occupational exposure to infectious agents.

The primary routes of infectious disease transmission in U.S. healthcare settings are contact, droplet, and airborne. Contact transmission can be sub-divided into direct and indirect contact. Direct contact transmission involves the transfer of infectious agents to a susceptible individual through physical contact with an infected individual (e.g., direct skin-to-skin contact). Indirect contact transmission occurs when infectious agents are transferred to a susceptible individual when the individual makes physical contact with contaminated items and surfaces (e.g., door knobs, patient-care instruments or equipment, bed rails, examination table). Two examples of contact transmissible infectious agents include Methicillin-resistant *Staphylococcus aureus* (MRSA) and Vancomycin-resistant enterococcus (VRE).

Droplets containing infectious agents are generated when an infected person coughs, sneezes, or talks, or during certain medical procedures, such as suctioning or endotracheal intubation. Transmission occurs when droplets generated in this way come into direct contact with the mucosal surfaces of the eyes, nose, or mouth of a susceptible individual. Droplets are too large to be airborne for long periods of time, and droplet transmission does not occur through the air over long distances. Two examples of droplet transmissible infectious agents are the influenza virus which causes the seasonal flu and *Bordetella pertussis* which causes pertussis (i.e., whooping cough).

Airborne transmission occurs through very small particles or droplet nuclei that contain infectious agents and can remain suspended in air for extended periods of time. When they are inhaled by a susceptible individual, they enter the respiratory tract and can cause infection. Since air currents can disperse these particles or droplet nuclei over long distances, airborne transmission does not require face-to-face contact with an infected individual. Airborne transmission only occurs with infectious agents that are capable of surviving and retaining infectivity for relatively long periods of time in airborne particles or droplet nuclei. Only a limited number of diseases are transmissible via the airborne route. Two examples of agents that can be spread through the airborne route include *Mycobacterium tuberculosis* which causes tuberculosis (TB) and the measles virus (*Measles morbillivirus*), which causes measles (sometimes called "rubeola," among other names).

Several OSHA standards and directives are directly applicable to protecting workers against transmission of infectious agents. These include OSHA's Bloodborne Pathogens standard (29 CFR 1910.1030) which provides protection of workers from exposures to blood and body fluids that may contain bloodborne infectious agents; OSHA's Personal Protective Equipment standard (29 CFR 1910.132) and Respiratory Protection standard (29 CFR 1910.134) which provide protection for workers when exposed to contact, droplet and airborne transmissible infectious agents; and OSHA's *TB compliance directive* which protects

workers against exposure to TB through enforcement of existing applicable OSHA standards and the General Duty Clause of the OSH Act.

CDC Guidelines

Below is an abbreviated list of CDC resources available to assist HCWs in assessing and reducing their risks for occupational exposure to infectious diseases.

- Hand Hygiene in Healthcare Settings. This web page provides HCWs and patients with a variety of resources including guidelines for providers, patient empowerment materials, the latest technological advances in hand hygiene adherence measurement, frequently asked questions, and links to promotional and educational tools published by the World Health Organization (WHO), universities, and health departments.
- Guide to Infection Prevention for Outpatient Settings: Minimum Expectations for Safe Care. This document is a summary guide of infection prevention recommendations for outpatient (ambulatory care) settings.
- Infection Control: Guideline for Disinfection and Sterilization in Healthcare Facilities. Includes a link to a document (Guideline for Disinfection and Sterilization in Healthcare Facilities) that presents evidence-based recommendations on the preferred methods for cleaning, disinfection and sterilization of patient-care medical devices and for cleaning and disinfecting the healthcare environment. This document supersedes the relevant sections contained in the 1985 Centers for Disease Control and Prevention (CDC) Guideline for Handwashing and Environmental Control.
- Isolation Precautions. Includes a link to a document (Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings) intended for use by infection control (IC) staff, healthcare epidemiologists, healthcare administrators, nurses, other healthcare providers, and persons responsible for developing, implementing, and evaluating IC programs for healthcare settings across the continuum of care.
- Multidrug-resistant organisms Management. All healthcare settings are affected by the emergence and transmission of antimicrobial-resistant microbes. Provides information for the prevention of transmission of Multidrug Resistant Organisms (MDROs).
- Guidelines for Environmental Infection Control in Health-Care Facilities. (June 6, 2003). This web page provides guidelines, recommendations and strategies for preventing environment-associated infections in healthcare facilities.
- Guideline for Infection Control in Health Care Personnel, 1998. These guidelines address infection control procedures to protect workers from occupational exposure to infectious agents.
- Healthcare Workers. National Institute for Occupational Safety and Health (NIOSH) Workplace Safety and Health Topic. Healthcare is the fastest-growing sector of the U.S. economy, employing over 18 million workers. Women represent nearly 80% of this work force. Healthcare workers face a wide range of hazards on the job, including needlestick injuries, back injuries, latex allergy, violence, and stress.
- Eye Safety– Eye Protection for Infection Control. National Institute for Occupational Safety and Health (NIOSH) Workplace Safety and Health Topic. NIOSH recommends eye protection for a variety of potential exposure settings where workers may be at risk of acquiring infectious diseases via ocular exposure.

Specific Diseases

Bloodborne Pathogens

- Bloodborne Pathogens and Needlestick Injuries. OSHA Safety and Health Topics Page.

Cytomegalovirus (CMV)

- Cytomegalovirus (CMV). OSHA Safety and Health Topics Page.

Ebola

- Ebola. OSHA Safety and Health Topics Page.

Seasonal Flu

- Seasonal Flu. OSHA Safety and Health Topics Page.

Pandemic Flu

- Pandemic Influenza. OSHA Safety and Health Topics Page.

Measles

- Measles. OSHA Safety and Health Topics Page.

MERS

- MERS. OSHA Safety and Health Topics Page.

MRSA

- Methicillin-resistant Staphylococcus Aureus (MRSA) Infections. Centers for Disease Control and Prevention (CDC). Methicillin-resistant *Staphylococcus Aureus* (MRSA) is a type of staph bacteria that is resistant to certain antibiotics which include methicillin and other more common antibiotics such as oxacillin, penicillin, and amoxicillin. This web site has links to numerous other web sites that provide information for protection of healthcare workers from MRSA infections.

- MDRO - Multidrug-Resistant Organisms – MRSA. OSHA. This is the Methicillin-resistant *Staphylococcus aureus* (MRSA) portion of the multi-drug resistant organism module of OSHA's Hospitals eTool. This electronic aid provides information to help stop the spread of MRSA among employees and others working in healthcare and other industries. Your local public health agency has information on what your community is doing to prevent the spread of MRSA.

Norovirus

- A Norovirus Outbreak Control Resource Toolkit for Healthcare Settings. Centers for Disease Control and Prevention (CDC). Because of high levels of contact and vulnerable patient populations, healthcare settings can be particularly susceptible to outbreaks of norovirus. To help address the challenges of managing and controlling norovirus gastroenteritis outbreaks in healthcare settings, the CDC offers a toolkit for healthcare professionals including up-to-date information, recommended infection control measures, and tools for outbreak response coordination and reporting.
- Noroviruses. (May 2008). OSHA Fact Sheet. Although noroviruses are currently more of a concern to the general public than to workers, the increasing incidence of norovirus outbreaks exposes many different worker groups, especially healthcare workers (HCWs).

SARS

- Information Regarding Severe Acute Respiratory Syndrome (SARS). OSHA.

Tuberculosis

- Tuberculosis. OSHA Safety and Health Topics Page.

Zika

- Zika. OSHA Safety and Health Topics Page.

Additional Biological Agents

- Biological Agents. OSHA Safety and Health Topics Page.

State Legislation

- California Code of Regulations, Title 8, Section 5199. Aerosol Transmissible Diseases. Cal-OSHA's ATD standard protects laboratory workers, as well as, healthcare workers, emergency responders, and many others from exposure to droplet and airborne transmissible diseases when engaged in the performance of their duties.

Workers' Rights ›

- **Part Number:** 1910
- **Part Number Title:** Occupational Safety and Health Standards
- **Subpart:** 1910 Subpart A
- **Subpart Title:** General
- **Standard Number:** 1910.9
- **Title:** Compliance duties owed to each employee.
- **GPO Source:** eCFR

1910.9(a)

Personal protective equipment. Standards in this part requiring the employer to provide personal protective equipment (PPE), including respirators and other types of PPE, because of hazards to employees impose a separate compliance duty with respect to each employee covered by the requirement. The employer must provide PPE to each employee required to use the PPE, and each failure to provide PPE to an employee may be considered a separate violation.

1910.9(b)

Training. Standards in this part requiring training on hazards and related matters, such as standards requiring that employees receive training or that the employer train employees, provide training to employees, or institute or implement a training program, impose a separate compliance duty with respect to each employee covered by the requirement. The employer must train each affected employee in the manner required by the standard, and each failure to train an employee may be considered a separate violation.

[73 FR 75583, Dec. 12, 2008]

- **Part Number:** 1910
- **Part Number Title:** Occupational Safety and Health Standards
- **Subpart:** 1910 Subpart I
- **Subpart Title:** Personal Protective Equipment
- **Standard Number:** 1910.132
- **Title:** General requirements.
- **GPO Source:** e-CFR

1910.132(a)

Application. Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

1910.132(b)

Employee-owned equipment. Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.

1910.132(c)

Design. All personal protective equipment shall be of safe design and construction for the work to be performed.

1910.132(d)

Hazard assessment and equipment selection.

1910.132(d)(1)

The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall:

1910.132(d)(1)(i)

Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;

1910.132(d)(1)(ii)

Communicate selection decisions to each affected employee; and,

1910.132(d)(1)(iii)

Select PPE that properly fits each affected employee.

Note:
Non-mandatory appendix B contains an example of procedures that would comply with the requirement for a hazard assessment.

1910.132(d)(2)

The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

1910.132(e)

Defective and damaged equipment. Defective or damaged personal protective equipment shall not be used.

1910.132(f)

Training.

1910.132(f)(1)

The employer shall provide training to each employee who is required by this section to use PPE. Each such employee shall be trained to know at

least the following:

1910.132(f)(1)(i)
When PPE is necessary;

1910.132(f)(1)(ii)
What PPE is necessary;

1910.132(f)(1)(iii)
How to properly don, doff, adjust, and wear PPE;

1910.132(f)(1)(iv)
The limitations of the PPE; and,

1910.132(f)(1)(v)
The proper care, maintenance, useful life and disposal of the PPE.

1910.132(f)(2)
Each affected employee shall demonstrate an understanding of the training specified in paragraph (f)(1) of this section, and the ability to use PPE properly, before being allowed to perform work requiring the use of PPE.

1910.132(f)(3)
When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by paragraph (f)(2) of this section, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

1910.132(f)(3)(i)
Changes in the workplace render previous training obsolete; or

1910.132(f)(3)(ii)
Changes in the types of PPE to be used render previous training obsolete; or

1910.132(f)(3)(iii)
Inadequacies in an affected employee's knowledge or use of assigned PPE indicate that the employee has not retained the requisite understanding or skill.

1910.132(g)
Paragraphs (d) and (f) of this section apply only to§§ 1910.133, 1910.135, 1910.136, 1910.138, and 1910.140. Paragraphs (d) and (f) of this section do not apply to§§ 1910.134 and 1910.137.

1910.132(h)
Payment for protective equipment.

1910.132(h)(1)
Except as provided by paragraphs (h)(2) through (h)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

1910.132(h)(2)
The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

1910.132(h)(3)
When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

1910.132(h)(4)
The employer is not required to pay for:

1910.132(h)(4)(i)
The logging boots required by 29 CFR 1910.266(d)(1)(v);

1910.132(h)(4)(ii)
Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

1910.132(h)(4)(iii)
Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

1910.132(h)(5)
The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

1910.132(h)(6)

Where an employee provides adequate protective equipment he or she owns pursuant to paragraph (b) of this section, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (h)(2) through (h)(5) of this section.

1910.132(h)(7)

This paragraph (h) shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note to §1910.132(h):

When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

[39 FR 23502, June 27, 1974, as amended at 59 FR 16334, April 6, 1994; 59 FR 33910, July 1, 1994; 59 FR 34580, July 6, 1994; 72 FR 64428, Nov. 15, 2007; 76 FR 33606, June 8, 2011; 81 FR 82999, Nov. 18, 2016]

- **Part Number:** 1910
- **Part Number Title:** Occupational Safety and Health Standards
- **Subpart:** 1910 Subpart I
- **Subpart Title:** Personal Protective Equipment
- **Standard Number:** 1910.134
- **Title:** Respiratory protection.
- **Appendix:** A; B-1; B-2; C; D
- **GPO Source:** e-CFR

This section applies to General Industry (part 1910), Shipyards (part 1915), Marine Terminals (part 1917), Longshoring (part 1918), and Construction (part 1926).

1910.134(a)

Permissible practice.

1910.134(a)(1)

In the control of those occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors, the primary objective shall be to prevent atmospheric contamination. This shall be accomplished as far as feasible by accepted engineering control measures (for example, enclosure or confinement of the operation, general and local ventilation, and substitution of less toxic materials). When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used pursuant to this section.

1910.134(a)(2)

A respirator shall be provided to each employee when such equipment is necessary to protect the health of such employee. The employer shall provide the respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protection program, which shall include the requirements outlined in paragraph (c) of this section. The program shall cover each employee required by this section to use a respirator.

1910.134(b)

Definitions. The following definitions are important terms used in the respiratory protection standard in this section.

Air-purifying respirator means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

Assigned protection factor (APF) means the workplace level of respiratory protection that a respirator or class of respirators is expected to provide to employees when the employer implements a continuing, effective respiratory protection program as specified by this section.

Atmosphere-supplying respirator means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

Canister or cartridge means a container with a filter, sorbent, or catalyst, or combination of these items, which removes specific contaminants from the air passed through the container.

Demand respirator means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

permissible respirator practice (e.g., certificate, registration, or other documentation) and who is trained to provide, or be delegated the responsibility to provide, some or all of the health care services required by paragraph (e) of this section.

Positive pressure respirator means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

Powered air-purifying respirator (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

Pressure demand respirator means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

Qualitative fit test (QLFT) means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

Quantitative fit test (QNFT) means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

Respiratory inlet covering means that portion of a respirator that forms the protective barrier between the user's respiratory tract and an air-purifying device or breathing air source, or both. It may be a facepiece, helmet, hood, suit, or a mouthpiece respirator with nose clamp.

Self-contained breathing apparatus (SCBA) means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

Service life means the period of time that a respirator, filter or sorbent , or other respiratory equipment provides adequate protection to the wearer.

Supplied-air respirator (SAR) or airline respirator means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

This section means this respiratory protection standard.

Tight-fitting facepiece means a respiratory inlet covering that forms a complete seal with the face.

User seal check means an action conducted by the respirator user to determine if the respirator is properly seated to the face.

1910.134(c)

Respiratory protection program. This paragraph requires the employer to develop and implement a written respiratory protection program with required worksite-specific procedures and elements for required respirator use. The program must be administered by a suitably trained program administrator. In addition, certain program elements may be required for voluntary use to prevent potential hazards associated with the use of the respirator. The Small Entity Compliance Guide contains criteria for the selection of a program administrator and a sample program that meets the requirements of this paragraph. Copies of the Small Entity Compliance Guide will be available on or about April 8, 1998 from the Occupational Safety and Health Administration's Office of Publications, Room N 3101, 200 Constitution Avenue, NW, Washington, DC, 20210 (202-219-4667).

1910.134(c)(1)

In any workplace where respirators are necessary to protect the health of the employee or whenever respirators are required by the employer, the employer shall establish and implement a written respiratory protection program with worksite-specific procedures. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respirator use. The employer shall include in the program the following provisions of this section, as applicable:

1910.134(c)(1)(i)

Procedures for selecting respirators for use in the workplace;

1910.134(c)(1)(ii)

Medical evaluations of employees required to use respirators;

- **Part Number:** 1910
- **Part Number Title:** Occupational Safety and Health Standards
- **Standard Number:** 1910.1030
- **Title:** Bloodborne pathogens.
- **Appendix:** A
- **GPO Source:** e-CFR

1910.1030(a)

Scope and Application. This section applies to all occupational exposure to blood or other potentially infectious materials as defined by paragraph (b) of this section.

1910.1030(b)

Definitions. For purposes of this section, the following shall apply:

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, or designated representative.

Blood means human blood, human blood components, and products made from human blood.

Bloodborne Pathogens means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

Clinical Laboratory means a workplace where diagnostic or other screening procedures are performed on blood or other potentially infectious materials.

Contaminated means the presence or the reasonably anticipated presence of blood or other potentially infectious materials on an item or surface.

Contaminated Laundry means laundry which has been soiled with blood or other potentially infectious materials or may contain sharps.

Contaminated Sharps means any contaminated object that can penetrate the skin including, but not limited to, needles, scalpels, broken glass, broken capillary tubes, and exposed ends of dental wires.

Decontamination means the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designated representative.

Engineering Controls means controls (e.g., sharps disposal containers, self-sheathing needles, safer medical devices, such as sharps with engineered sharps injury protections and needleless systems) that isolate or remove the bloodborne pathogens hazard from the workplace.

Exposure Incident means a specific eye, mouth, other mucous membrane, non-intact skin, or parenteral contact with blood or other potentially infectious materials that results from the performance of an employee's duties.

Handwashing Facilities means a facility providing an adequate supply of running potable water, soap, and single-use towels or air-drying machines.

Licensed Healthcare Professional is a person whose legally permitted scope of practice allows him or her to independently perform the activities required by paragraph (f) Hepatitis B Vaccination and Post-exposure Evaluation and Follow-up.

HBV means hepatitis B virus.

HIV means human immunodeficiency virus.

Needleless systems means a device that does not use needles for:

(1) The collection of bodily fluids or withdrawal of body fluids after initial venous or arterial access is established;

be the basic requirement for entry into the work area from access corridors or other contiguous areas. Physical separation of the high-containment work area from access corridors or other areas or activities may also be provided by a double-doored clothes-change room (showers may be included), airlock, or other access facility that requires passing through two sets of doors before entering the work area.

1910.1030(e)(4)(ii)
The surfaces of doors, walls, floors and ceilings in the work area shall be water resistant so that they can be easily cleaned. Penetrations in these surfaces shall be sealed or capable of being sealed to facilitate decontamination.

1910.1030(e)(4)(iii)
Each work area shall contain a sink for washing hands and a readily available eye wash facility. The sink shall be foot, elbow, or automatically operated and shall be located near the exit door of the work area.

1910.1030(e)(4)(iv)
Access doors to the work area or containment module shall be self-closing.

1910.1030(e)(4)(v)
An autoclave for decontamination of regulated waste shall be available within or as near as possible to the work area.

1910.1030(e)(4)(vi)
A ducted exhaust-air ventilation system shall be provided. This system shall create directional airflow that draws air into the work area through the entry area. The exhaust air shall not be recirculated to any other area of the building, shall be discharged to the outside, and shall be dispersed away from occupied areas and air intakes. The proper direction of the airflow shall be verified (i.e., into the work area).

1910.1030(e)(5)
Training Requirements. Additional training requirements for employees in HIV and HBV research laboratories and HIV and HBV production facilities are specified in paragraph (g)(2)(ix).

1910.1030(f)
Hepatitis B Vaccination and Post-exposure Evaluation and Follow-up -

1910.1030(f)(1)
General.

1910.1030(f)(1)(i)
The employer shall make available the hepatitis B vaccine and vaccination series to all employees who have occupational exposure, and post-exposure evaluation and follow-up to all employees who have had an exposure incident.

1910.1030(f)(1)(ii)
The employer shall ensure that all medical evaluations and procedures including the hepatitis B vaccine and vaccination series and post-exposure evaluation and follow-up, including prophylaxis, are:

1910.1030(f)(1)(ii)(A)
Made available at no cost to the employee;

1910.1030(f)(1)(ii)(B)
Made available to the employee at a reasonable time and place;

1910.1030(f)(1)(ii)(C)
Performed by or under the supervision of a licensed physician or by or under the supervision of another licensed healthcare professional; and

1910.1030(f)(1)(ii)(D)
Provided according to recommendations of the U.S. Public Health Service current at the time these evaluations and procedures take place, except as specified by this paragraph (f).

1910.1030(f)(1)(iii)
The employer shall ensure that all laboratory tests are conducted by an accredited laboratory at no cost to the employee.

1910.1030(f)(2)
Hepatitis B Vaccination.

1910.1030(f)(2)(i)
Hepatitis B vaccination shall be made available after the employee has received the training required in paragraph (g)(2)(vii)(I) and within 10 working days of initial assignment to all employees who have occupational exposure unless the employee has previously received the complete hepatitis B vaccination series, antibody testing has revealed that the employee is immune, or the vaccine is contraindicated for medical reasons.

1910.1030(f)(2)(ii)
The employer shall not make participation in a prescreening program a prerequisite for receiving hepatitis B vaccination.

1910.1030(f)(2)(iii)
If the employee initially declines hepatitis B vaccination but at a later date while still covered under the standard decides to accept the vaccination, the employer shall make available hepatitis B vaccination at that time.

1910.1030(f)(2)(iv)
The employer shall assure that employees who decline to accept hepatitis B vaccination offered by the employer sign the statement in appendix A.

1910.1030(f)(2)(v)
If a routine booster dose(s) of hepatitis B vaccine is recommended by the U.S. Public Health Service at a future date, such booster dose(s) shall be made available in accordance with section (f)(1)(ii).

1910.1030(f)(3)
Post-exposure Evaluation and Follow-up. Following a report of an exposure incident, the employer shall make immediately available to the exposed employee a confidential medical evaluation and follow-up, including at least the following elements:

1910.1030(f)(3)(i)
Documentation of the route(s) of exposure, and the circumstances under which the exposure incident occurred;

1910.1030(f)(3)(ii)
Identification and documentation of the source individual, unless the employer can establish that identification is infeasible or prohibited by state or local law;

1910.1030(f)(3)(ii)(A)
The source individual's blood shall be tested as soon as feasible and after consent is obtained in order to determine HBV and HIV infectivity. If consent is not obtained, the employer shall establish that legally required consent cannot be obtained. When the source individual's consent is not required by law, the source individual's blood, if available, shall be tested and the results documented.

1910.1030(f)(3)(ii)(B)
When the source individual is already known to be infected with HBV or HIV, testing for the source individual's known HBV or HIV status need not be repeated.

1910.1030(f)(3)(ii)(C)
Results of the source individual's testing shall be made available to the exposed employee, and the employee shall be informed of applicable laws and regulations concerning disclosure of the identity and infectious status of the source individual.

1910.1030(f)(3)(iii)
Collection and testing of blood for HBV and HIV serological status;

1910.1030(f)(3)(iii)(A)
The exposed employee's blood shall be collected as soon as feasible and tested after consent is obtained.

1910.1030(f)(3)(iii)(B)
If the employee consents to baseline blood collection, but does not give consent at that time for HIV serologic testing, the sample shall be preserved for at least 90 days. If, within 90 days of the exposure incident, the employee elects to have the baseline sample tested, such testing shall be done as soon as feasible.

1910.1030(f)(3)(iv)
Post-exposure prophylaxis, when medically indicated, as recommended by the U.S. Public Health Service;

1910.1030(f)(3)(v)
Counseling; and

1910.1030(f)(3)(vi)
Evaluation of reported illnesses.

1910.1030(f)(4)
Information Provided to the Healthcare Professional.

1910.1030(f)(4)(i)
The employer shall ensure that the healthcare professional responsible for the employee's Hepatitis B vaccination is provided a copy of this regulation.

1910.1030(f)(4)(ii)
The employer shall ensure that the healthcare professional evaluating an employee after an exposure incident is provided the following information:

1910.1030(f)(4)(ii)(A)
A copy of this regulation;

1910.1030(f)(4)(ii)(B)
A description of the exposed employee's duties as they relate to the exposure incident;

1910.1030(f)(4)(ii)(C)
Documentation of the route(s) of exposure and circumstances under which exposure occurred;

UNITED STATES
DEPARTMENT OF LABOR

OSHA

MENU

By Standard Number / 1905.10 - Variances and other relief under section 6(b)(6)(A).

- **Part Number:** 1905
- **Part Number Title:** Rules of Practice for Variances Limitations Variations Tolerances and Exemptions Under the Williams Steiger Occupational Safety and Health Act of 1970
- **Subpart:** 1905 Subpart B
- **Subpart Title:** Applications for Variances, Limitations, Variations, Tolerances, Exemptions and Other Relief
- **Standard Number:** 1905.10
- **Title:** Variances and other relief under section 6(b)(6)(A).
- **GPO Source:** e-CFR

1905.10(a)
Application for variance. Any employer, or class of employers, desiring a variance from a standard, or portion thereof, authorized by section 6(b)(6)(A) of the Act may file a written application containing the information specified in paragraph (b) of this section with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210.

1905.10(b)
Contents. An application filed pursuant to paragraph (a) of this section shall include:

1905.10(b)(1)
The name and address of the applicant;

1905.10(b)(2)
The address of the place or places of employment involved;

1905.10(b)(3)
A specification of the standard or portion thereof from which the applicant seeks a variance;

1905.10(b)(4)
A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;

1905.10(b)(5)
A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the standard;

1905.10(b)(6)
A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standard;

1905.10(b)(7)
A statement of the facts the applicant would show to establish that

1905.10(b)(7)(i)

The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

1905.10(b)(7)(ii)

He is taking all available steps to safeguard his employees against the hazards covered by the standard; and

1905.10(b)(7)(iii)

He has an effective program for coming into compliance with the standard as quickly as practicable;

1905.10(b)(8)

Any request for a hearing, as provided in this part;

1905.10(b)(9)

A statement that the applicant has informed his affected employees of the application by giving a copy thereof to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and

1905.10(b)(10)

A description of how affected employees have been informed of the application and of their right to petition the Assistant Secretary for a hearing.

1905.10(b)(11)

Where the requested variance would be applicable to employment or places of employment in more than one State, including at least one State with a State plan approved under section 18 of the Act, and involves a standard, or portion thereof, identical to a State standard effective under such plan:

1905.10(b)(11)(i)

A side-by-side comparison of the Federal standard, or portion thereof, involved with the State standard, or portion thereof, identical in substance and requirements;

1905.10(b)(11)(ii)

A certification that the employer or employers have not filed for such variance on the same material facts for the same employment or place of employment with any State authority having jurisdiction under an approval plan over any employment or place of employment covered in the application; and

1905.10(b)(11)(iii)

A statement as to whether, with an identification of, any citations for violations of the State standard, or portion thereof, involved have been issued to the employer or employers by any of the State authorities enforcing the standard under a plan, and are pending.

1905.10(c)

Interim order.—

1905.10(c)(1)

Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Assistant Secretary may rule ex parte upon the application.

1905.10(c)(2)

Notice of denial of application. If an application filed pursuant to paragraph (c)(1) of this section is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefor.

1905.10(c)(3)

Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published in the FEDERAL REGISTER. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

[36 FR 12290, June 30, 1971, as amended at 40 FR 25449, June 16, 1975]

- **Record Type:** OSHA Instruction
  Current Directive
- **Number:** STD 06-00-001
  Old Directive
- **Number:** STD 6.1
- **Title:** Variance Policy and Procedures
- **Information Date:** 10/30/1978

OSHA INSTRUCTION STD 6.1 OCTOBER 30, 1978

OSHA PROGRAM DIRECTIVE #76-5

TO: REGIONAL ADMINISTRATORS ASSISTANT REGIONAL ADMINISTRATORS

Subject: Variance Policy and Procedures

1. Purpose. The purpose of this program directive is to consolidate recent developments in the procedures for handling Federal variance applications and to clarify their impact on State plans. States will be expected to develop "at least as effective as" procedures for handling their variance applications. This program directive also provides performance standards against which State Plans should be monitored.

2. Directives Affected. None

3. Background. After reviewing the Federal variance procedures, the General Accounting Office (GAO) made several recommendations for establishing time frames within which certain actions would occur and for establishing or formalizing certain other variance procedures. Most of these procedures apply to requests for both temporary and permanent variances.

This directive also contains other items which will be considered in determining the effectiveness of State variance procedure, but which were not a part of GAO's recommendations.

4. Policy. The following procedures are hereby formally adopted in the National Office and will be used as guidelines in determining "as effective as" procedures in the States:

a. The final decision will normally be made on an adequate variance application within 120 days of its receipt. In the National Office, this is broken down as follows:

Receipt to publication - 30 days Public Comment Period - 30 days

Final order forwarded for publication
no comments received - 45 days comments received - 60 days

OSHA INSTRUCTION STD 6.1 OCTOBER 30, 1978

b. A variance application which does not state an alternative method of compliance will be denied a procedurally inadequate within 15 days of receipt. This time frame will also be used for procedural denials of temporary variances, such as a request for temporary variance from a standard already in effect, or one in which the steps to safeguard employees are not stated.

c. Letters denying or otherwise closing variance applications will be sent to applicants, and the appropriate Regional and Area Offices. In multi-state variance requests, a copy of the letter will go to the appropriate State Offices, i.e. States with approval plans that may be affected. If an association is involved, the letter will be sent to the association headquarters, with the requirement that it be forwarded to all affected employers. If there has been direct contact with employees or employee groups, a copy will be sent to those groups.

d. Letters denying otherwise closing variance applications will include a statement describing any potential hazard and referring the applicant to the OSHA Area Office for further general guidance. Specific advice to the applicant would have to come from private consultants or from consulting programs established under Sections 18(b) or 7(c)(1) of the Act.

e. All letters of denial or otherwise closing a formal application will contain a requirement that they be posted for the employees to read.

f. The Area Office will be asked to perform a compliance inspection within 30 days of denial of a variance request where no citation was previously involved. This inspection will involve only the areas concerned in the denial of variance. The usual citation procedures will be followed for any violations which are noted. The letter of denial to the applicant will state the Area Office will receive a copy of the letter and will perform such a limited inspection within 30 days.

Many variance requests denied involve hazards for which the employer has been cited and is under abatement. These would be handled under regular abatement procedures.

The Area Offices area informed of variances granted within their area of coverage. They will be asked to schedule routine follow-up inspections.

g. Variance inspection will be required when making decisions on adequate variance requests involving flammable and combustible liquids, toxic and carcinogenic substances, explosives, electrical equipment and others as deemed necessary. Variance inspections will also be required for temporary and experimental variances, for situations involving employee objection to the variance, or where first-hand examination is necessary to obtain further information.

h. The public notices and filed will contain the information on which a decision was based. This will include the results of the variance inspection, if one was held, or the reasons it was determined that a variance inspection was not necessary.

i. 1. An employee complaint concerning safety under a granted variance with the terms of the order will be handled by the Area Office under routine complaint procedures.

2. When an employee requests a hearing on the merits of a variance application, a variance inspection will normally be made within 15 days.

j. A variance inspection will be performed before a temporary variance is granted. There may be need for an additional variance inspection if the applicant states that it experiences problems in meeting scheduled deadlines. The Area Office will be informed of the expiration of a temporary variance and will be asked to perform a follow-up inspection.

The following are additional policy items which the States should consider in adopting "as effective as" procedures and which the Regions should be aware of in their morning activities:

a. Clarification of an issue through standards interpretation, etc., should be used whenever possible to avoid processing unnecessary variances. Use of this procedure should be noted on the State's quarterly statistical

report.

b. The Federal variance inspection is a single purpose, pre-announced, non-compliance inspection. It is conducted by Regional technical support staff or Area Director at the request of the National Office, and at a time that is arranged with the applicant. The employee representative is invited to participate in the visit. The inspection is limited to

gathering information concerning the variance. No citations will be issued, but the employer, employees and Area Director will be informed if an imminent danger situation is found.

c. The State should have an established policy on previously granted single establishment Federal variances, e.g., automatic acceptance, acceptance on employer filing with the State, independent State action required.

d. The opportunity for consolidating a multi-establishment variance application through the Federal variance reciprocity procedure should be made known to interested parties in those States having standards identical to the Federal. Further, States should consider requiring employers to certify that a variance application has not been previously acted upon Federally. (This is to avoid the inadvertent State granting of a variance which has been denied Federally and the possibility of unnecessary concurrent Federal/State action on a variance request.)

Temporary variances are technically available only during that period between promulgation of a standard and its effective date for employers unable to come into compliance within that time. Therefore, States may not use the temporary variance procedure to achieve the same result as a Petition for Modification of Abatement (PMA). In general a PMA is preferable in those cases where there is an outstanding citation and the employer, due to the unavailability of materials, technical expertise, etc., cannot meet the original abatement date. A PMA application must specify the steps taken to guarantee worker safety in the same manner as is required in a temporary variance application, thereby providing the same degree of protection to employees.

f. Where a State standard is found to be less effective than a comparable Federal standard, States should review all variances that have been granted to that standard. This does not mean that States must revoke all such variances but that they should determine that the variances provide protection equivalent to that provided by the standard as revised to be "at least as effective". In most States the variances (permanent) could only be changed or revoked after being in effect for at least six months.

5. Action. Procedures consistent with the above should be adopted by the States within 90 days. Where regulatory amendments and/or compliance manual changes are appropriate, the Regional should work with the State to establish a reasonable timetable for submission of a State plan amendment. These guidelines should be used by the Regional Office in monitoring and evaluating State variance activity.

6. Filing. This directive is effective immediately and shall remain in effect until further notice.

Barry White Associate Assistant Secretary for Regional Programs

DISTRIBUTION:

A-1 B-1 C-1 D-4 E-1

Occupational Safety & Health Administration
200 Constitution Ave NW
Washington, DC 20210
800-321-6742 (OSHA)
TTY
www.OSHA.gov

FEDERAL GOVERNMENT

White House
Severe Storm and Flood Recovery Assistance
Disaster Recovery Assistance
DisasterAssistance.gov
USA.gov
No Fear Act Data
U.S. Office of Special Counsel

OCCUPATIONAL SAFETY & HEALTH

Frequently Asked Questions
A-Z Index
Freedom of Information Act - OSHA
Read The OSHA Newsletter
Subscribe to the OSHA Newsletter
OSHA Publications
Office of Inspector General

ABOUT THIS SITE

Freedom of Information Act - DOL
Privacy & Security Statement
Disclaimers
Important Web Site Notices
Plug-ins Used by DOL
Accessibility Statement

EXIBIT #14

12.20.21

Guidance on Accommodations for Workers

Per the December 13, 2021 Order of the Commissioner of Health workplaces are required to exclude staff who are not vaccinated and do not fit within exceptions provided by the Order no later than December 27, 2021.

Pursuant to Section 6 of that order, workers may apply for a Reasonable Accommodation to be exempt from this requirement. Reasonable accommodations may be granted for religious reasons and for documented medical reasons (including documented medical reasons relating to pregnancy).

In some cases it may be appropriate to allow a brief extension of time to be vaccinated for a person who is the victim of domestic violence, sex offenses or stalking. A claim for a reasonable accommodation on this basis should be supported by documentation from a social worker, clergy member or other professional who can confirm the worker's status as a victim.

Employers may deny accommodations that impose an undue burden on the employer. EEOC guidance states that whether undue hardship exists should be based on an analysis of several factors, including:

• the nature and cost of the accommodation needed;

• the overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility;

• the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);

• the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer;

• the impact of the accommodation on the operation of the facility.

The attached checklists are not legal advice. The checklists are intended to guide employers and managers in evaluating requests they may receive from workers for reasonable accommodations or exemptions from the requirement that they be vaccinated against COVID-19. It is not intended, nor is it a substitute for legal advice from a licensed attorney.

For more information about the reasonable accommodation process you can review the information provided by the New York City Commission on Human Rights and the Equal Employment Opportunity Commission.

MAINTAIN COPIES OF COMPLETED CHECKLISTS TO SERVE AS A RECORD FOR ANY EXEMPTIONS OR ACCOMMODATIONS THAT ARE GRANTED.

12.20.21

Accommodation for Medical Reasons

All medical documentation must be from the worker's health care provider with a valid medical license. The below are circumstances found by the CDC and the New York City Department of Health and Mental Hygiene as worthy of medical exemption from vaccination:

1. A **Permanent** Medical Exemption may be granted if:

☐ Worker had a severe allergic reaction (for example, anaphylaxis or angioedema) after a previous dose or to a component of all three approved COVID-19 vaccines.

☐ Worker has a known diagnosed allergy to a component in all three approved COVID-19 vaccines.

2. A **Temporary** Medical Exemption may be granted if:

☐ Worker has presented medical documentation showing that they are within 90 days of monoclonal antibody or convalescent plasma treatment of COVID-19.

☐ Worker has presented medical documentation showing they recently underwent stem cell transplant, CAR Tcell therapy, or other therapy or treatment that would temporarily interfere with the worker's ability to respond adequately to vaccination, or mount an immune response due to treatment.

☐ Worker has Pericarditis or myocarditis.

The length of a temporary medical exemption will be determined on a case-by-case basis after considering the medical documentation. An employee will be required to be vaccinated at the end of the temporary period.

If any of the above boxes in 1 or 2 are checked, Worker may receive an accommodation and not be vaccinated.

Accommodation

☐ Weekly PCR testing for COVID-19 and Masking at all times when not eating or drinking. Any eating or drinking must occur at least six feet away from others.

☐ Telework or remote work that does not expose others to the accommodated worker.

☐ Leave of Absence.

☐ Other _____

☐ No accommodation is granted because the unvaccinated worker would likely pose a direct threat to themselves or others.

☐ No accommodation is granted because accommodation presents an undue burden on the employer.

Worker Name:_____ Date: _____

Temporary Accommodation Ends On: _____

Employer Representative: _____ Title: _____

12.20.21

Accommodation for Religious Reasons

1. Is the request based solely on a personal, political, or philosophical preference?

☐ The government should not force people to get vaccines or interfere with medical decisions.
☐ This vaccine is not safe or ineffective.
☐ COVID is a hoax.
☐ Other expression of personal, political or philosophical belief _____
_____

If any of the above are the only basis for the accommodation request, Worker does not qualify for a religious accommodation.

2. Is the request based on a sincerely held religious, moral, or ethical belief?

☐ Worker has explained/documented how the belief requires the worker not to be vaccinated.
> Worker saying, for example, they practice a particular religion is not enough on its own.
> A clergy letter is not required, but helpful and persuasive when the clergy is someone who has a personal relationship with the employee; Form letters or letters from out-of-town clergy who do not know the worker generally are not.

☐ The worker has not taken other kinds of vaccinations previously.
>If worker has received other vaccines, they should explain why those vaccines were not against their religion.

☐ Worker says religious belief prevents them from allowing certain substances to enter their body.
>If yes, the worker should list/describe other commonly used medicines, food/drink, or other substances that they do not allow to enter their bodies.
_____

☐ Worker says that they cannot take the vaccine because it was developed and/or tested using fetal cells that the worker is concerned may have been the result of an abortion.
>Does worker takes medications such as ibuprofen (Advil), acetaminophen (Tylenol), or any other medications similarly developed or tested using fetal cell derivative lines? Such behavior would be inconsistent with this religious belief and generally means the worker would be denied an accommodation.

If any of the above are checked, Worker may qualify for a religious accommodation.

Accommodation

☐ Weekly PCR testing for COVID-19 and Masking at all times when not eating or drinking. Any eating or drinking must occur at least six feet away from others.
☐ Telework or remote work that does not expose others to the accommodated worker.
☐ Leave of Absence.
☐ Other _____
☐ No accommodation is granted because the unvaccinated worker would likely pose a direct threat to themselves or others.
☐ No accommodation is granted because accommodation presents an undue burden on the employer.

Worker Name:_____ Date: _____

Employer Representative: _____ Title: _____

EXIBIT #16

Acta Biomed. 2020 Mar 19;91(1):157-160. doi: 10.23750/abm.v91i1.9397.

WHO Declares COVID-19 a Pandemic

Domenico Cucinotta [1], Maurizio Vanelli [2]

Affiliations + expand

PMID: 32191675 PMCID: PMC7569573 DOI: 10.23750/abm.v91i1.9397

Free PMC article

Abstract

The World Health Organization (WHO) on March 11, 2020, has declared the novel coronavirus (COVID-19) outbreak a global pandemic (1). At a news briefing , WHO Director-General, Dr. Tedros Adhanom Ghebreyesus, noted that over the past 2 weeks, the number of cases outside China increased 13-fold and the number of countries with cases increased threefold. Further increases are expected. He said that the WHO is "deeply concerned both by the alarming levels of spread and severity and by the alarming levels of inaction," and he called on countries to take action now to contain the virus. "We should double down," he said. "We should be more aggressive." [...].

Conflict of interest statement

The author declares that he has no commercial associations (e.g. consultancies, stock ownership, equity interest, patent/licensing arrangement etc.) that might pose a conflict of interest in connection with the submitted article

Comment in

COVID-19 and maternal pre-eclampsia: A synopsis.

Abbas AM, Ahmed OA, Shaltout AS.

Scand J Immunol. 2020 Sep;92(3):e12918. doi: 10.1111/sji.12918. Epub 2020 Jul 3.

PMID: 32542883 Free PMC article. No abstract available.

Similar articles

Coronavirus Disease 2019 outbreak: preparedness and readiness of countries in the Eastern Mediterranean Region.

Al-Mandhari A, Samhouri D, Abubakar A, Brennan R.

East Mediterr Health J. 2020 Feb 24;26(2):136-137. doi: 10.26719/2020.26.2.136.

PMID: 32141588

Will novel virus go pandemic or be contained?

Kupferschmidt K, Cohen J.

Science. 2020 Feb 7;367(6478):610-611. doi: 10.1126/science.367.6478.610.

PMID: 32029604 No abstract available.

Pandemic potential of 2019-nCoV.

Thompson R.

Lancet Infect Dis. 2020 Mar;20(3):280. doi: 10.1016/S1473-3099(20)30068-2. Epub 2020 Feb 7.

PMID: 32043978 Free PMC article. No abstract available.

The continued epidemic threat of SARS-CoV-2 and implications for the future of global public health.

Sheahan TP, Frieman MB.
Curr Opin Virol. 2020 Feb;40:37-40. doi: 10.1016/j.coviro.2020.05.010. Epub 2020 Jun 4.
PMID: 32569751 Free PMC article. Review.

[Characteristics of SARS-CoV-2 and potential pharmacological treatment].

Pawlik L, Śpiołek E, Fichna J, Tarasiuk A.
Postepy Biochem. 2020 May 9;66(2):83-90. doi: 10.18388/pb.2020_321.
PMID: 32700510 Review. Polish.

See all similar articles

Cited by

A comparison between SARS-CoV-1 and SARS-CoV2: an update on current COVID-19 vaccines.

Abdolmaleki G, Taheri MA, Paridehpour S, Mohammadi NM, Tabatabaei YA, Mousavi T, Amin M.
Daru. 2022 Sep 2. doi: 10.1007/s40199-022-00446-8. Online ahead of print.
PMID: 36050585 Review.

COVID-19, Retention in HIV Care, and Access to Ancillary Services for Young Black Men Living with HIV in Chicago.

Voisin DR, Edwards T, Takahashi LM, Valadez-Tapia S, Shah H, Oselett C, Bouacha N, Dakin A, Quinn K.
AIDS Behav. 2022 Sep 1. doi: 10.1007/s10461-022-03789-0. Online ahead of print.
PMID: 36048289

Multithreshold Segmentation and Machine Learning Based Approach to Differentiate COVID-19 from Viral Pneumonia.

Mahaboob Basha S, Lira Neto AV, Alshathri S, Elaziz MA, Hashmitha Mohisin S, De Albuquerque VHC.
Comput Intell Neurosci. 2022 Aug 20;2022:2728866. doi: 10.1155/2022/2728866. eCollection 2022.
PMID: 36039344 Free PMC article.

Postoperative outcomes that matter to patients undergoing inguinal hernia repair: A qualitative study.

Gram-Hanssen A, Laursen J, Zetner D, Rosenberg J.
Surg Open Sci. 2022 Jul 22;10:76-82. doi: 10.1016/j.sopen.2022.07.002. eCollection 2022 Oct.
PMID: 36039074 Free PMC article.

Predictive ability of viscoelastic testing using ClotPro® for short-term outcome in patients with severe Covid-19 ARDS with or without ECMO therapy: a retrospective study.

Heubner L, Greiner M, Vicent O, Beyer-Westendorf J, Tiebel O, Scholz U, Güldner A, Mirus M, Fries D, Koch T, Spieth PM.
Thromb J. 2022 Aug 29;20(1):48. doi: 10.1186/s12959-022-00403-0.
PMID: 36038895 Free PMC article.

See all "Cited by" articles

References

1. WHO Director-General's opening remarks at the media briefing on COVID19 -March 2020
2. CIDRAP-Center for Infectious Disease Research and Policy. 11 March 2020
3. Srinivas M, Gomersall CD, Fowler R. Critically Ill Patients With COVID-19 JAMA. Published online. March 11, 2020 doi:10.1001/JAMA.2020.3633.
4. Zhang Q, Chen J, Xiang R, et al. Detection of Covid-19 in Children in Early January 2020 in Wuhan, China. N Engl J Med. March 12, 2020 (letter) DOI: 10.1056/NEJMc2003717. - PMC - PubMed
5. Huang C, Wang Y, Li X, et al. Clinical features of patients infected with 2019 novel coronavirus in Wuhan, China. Lancet. 2020;395:497–506. [PMID: 31986264] doi:10.1016/S0140-6736(20)30183. - PMC - PubMed

Show all 13 references

MeSH terms

- Betacoronavirus*
- COVID-19
- China
- Coronavirus Infections / epidemiology*
- Coronavirus Infections / virology*
- Humans
- Pandemics*
- Pneumonia, Viral / epidemiology*
- Pneumonia, Viral / virology*
- SARS-CoV-2
- World Health Organization

Related information

Cited in Books

LinkOut – more resources

Full Text Sources

Europe PubMed Central
PubMed Central

Other Literature Sources

The Lens - Patent Citations

Medical

ClinicalTrials.gov

Miscellaneous

NCI CPTAC Assay Portal

EXIBIT #17

World Health Organization

Overview

Before the H1N1 pandemic in 2009, the influenza A(H1N1) virus had never been identified as a cause of infections in people. Genetic analyses of this virus have shown that it originated from animal influenza viruses and is unrelated to the human seasonal H1N1 viruses that have been in general circulation among people since 1977.

After early reports of influenza outbreaks in North America in April 2009, the new influenza virus spread rapidly around the world. By the time WHO declared a pandemic in June 2009, a total of 74

countries and territories had reported laboratory confirmed infections. Unlike typical seasonal flu patterns, the new virus caused high levels of summer infections in the northern hemisphere, and then even higher levels of activity during cooler months. The new virus also led to patterns of death and illness not normally seen in influenza infections.

The H1N1 (2009) virus continues to circulate as a seasonal virus and is included in the vaccines against seasonal influenza.

Emergency List >

Influenza (avian and other zoonotic) >

Influenza seasonal >

WHO news

All →

OSHA National News Release

U.S. Department of Labor

09-1375-NAT
Nov. 9,2009
Contact: Gloria Della
Phone: 202-693-8666

US Department of Labor's OSHA provides workplace H1N1 influenza precaution and protection information for workers and employers

New Web site offers fact sheets with practical information

WASHINGTON - The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has issued commonsense fact sheets that employers and workers can use to promote safety during the current H1N1 influenza outbreak.

The fact sheets inform employers and workers about ways to reduce the risk of exposure to the 2009 H1N1 virus at work. Separate fact sheets for health care workers, who carry out tasks and activities that require close contact with 2009 H1N1 patients, contain additional precautions.

"Protecting our nation's workers is OSHA's top priority," said Jordan Barab, the agency's acting assistant secretary. "These fact sheets are tools we have developed to help ensure America's workers stay healthy and our businesses remain viable. OSHA's new fact sheets will help all employers identify appropriate actions to protect their workers."

OSHA's "Workplace Safety and H1N1" Web site provides easy to understand information appropriate for all workplaces and more extensive guidance for those involved in higher risk health care activities. The fact sheets are advisory in nature and informational in content.

As new information about the 2009 H1N1 virus becomes available, these workplace fact sheets will be updated. Employers and workers should review OSHA's http://www.osha.gov/h1n1 site often to ensure they have the most up-to-date information when making decisions about their operations and planning.

Under the Occupational Safety and Health Act, OSHA's role is to promote safe and healthful working conditions for America's working men and women by setting and enforcing standards, and providing training, outreach and education. For more information about the agency, visit http://www.osha.gov.

###

UNITED STATES
DEPARTMENT OF LABOR

Occupational Safety & Health Administration
200 Constitution Ave NW
Washington, DC 20210
800-321-6742 (OSHA)
TTY
www.OSHA.gov

FEDERAL GOVERNMENT

White House
Severe Storm and Flood Recovery Assistance
Disaster Recovery Assistance
DisasterAssistance.gov
USA.gov
No Fear Act Data
U.S. Office of Special Counsel

OCCUPATIONAL SAFETY & HEALTH

Frequently Asked Questions
A - Z Index
Freedom of Information Act - OSHA
Read The OSHA Newsletter
Subscribe to the OSHA Newsletter
OSHA Publications
Office of Inspector General

ABOUT THIS SITE

Freedom of Information Act - DOL
Privacy & Security Statement
Disclaimers
Important Web Site Notices
Plug-ins Used by DOL
Accessibility Statement

EXIBIT #18

Scientific Brief: SARS-CoV-2 Transmission

Updated May 7, 2021 Print

COVID-19 Science Briefs provide a summary of the scientific evidence used to inform specific CDC guidance and recommendations. The Science Briefs reflect the scientific evidence, and CDC's understanding of it, on a specific topic at the time of the Brief's publication. Though CDC seeks to update Science Briefs when and as appropriate, given ongoing changes in scientific evidence an individual Science Brief might not reflect CDC's current understanding of that topic. As scientific evidence and available information on COVID-19 change, Science Briefs will be systematically archived as historic reference materials.

Page First Published May 7, 2021 | View Page Updates

On This Page

SARS-CoV-2 is transmitted by exposure to infectious respiratory fluids

The principal mode by which people are infected with SARS-CoV-2 (the virus that causes COVID-19) is through exposure to respiratory fluids carrying infectious virus. Exposure occurs in three principal ways: (1) inhalation of very fine respiratory droplets and aerosol particles, (2) deposition of respiratory droplets and particles on exposed mucous membranes in the mouth, nose, or eye by direct splashes and sprays, and (3) touching mucous membranes with hands that have been soiled either directly by virus-containing respiratory fluids or indirectly by touching surfaces with virus on them.

People release respiratory fluids during exhalation (e.g., quiet breathing, speaking, singing, exercise, coughing, sneezing) in the form of droplets across a spectrum of sizes.[1-9] These droplets carry virus and transmit infection.

- The largest droplets settle out of the air rapidly, within seconds to minutes.
- The smallest very fine droplets, and aerosol particles formed when these fine droplets rapidly dry, are small enough that they can remain suspended in the air for minutes to hours.

Infectious exposures to respiratory fluids carrying SARS-CoV-2 occur in three principal ways (not mutually exclusive):

1. **Inhalation** of air carrying very small fine droplets and aerosol particles that contain infectious virus. Risk of transmission is greatest within three to six feet of an infectious source where the concentration of these very fine droplets and particles is greatest.
2. **Deposition** of virus carried in exhaled droplets and particles onto exposed mucous membranes (i.e., "splashes and sprays", such as being coughed on). Risk of transmission is likewise greatest close to an infectious source where the concentration of these exhaled droplets and particles is greatest.
3. **Touching** mucous membranes with hands soiled by exhaled respiratory fluids containing virus or from touching inanimate surfaces contaminated with virus.

Top of Page

The risk of SARS-CoV-2 infection varies according to the amount of virus to which a person is exposed

Once infectious droplets and particles are exhaled, they move outward from the source. The risk for infection decreases with increasing distance from the source and increasing time after exhalation. Two principal processes determine the amount of virus to which a person is exposed in the air or by touching a surface contaminated by virus:

1. **Decreasing concentration of virus in the air** as larger and heavier respiratory droplets containing virus fall to the ground or other surfaces under the force of gravity and the very fine droplets and aerosol particles that remain in the airstream progressively mix with, and become diluted within, the growing volume and streams of air they encounter. This mixing is not necessarily uniform and can be influenced by thermal layering and initial jetting of exhalations.
2. **Progressive loss of viral viability and infectiousness** over time influenced by environmental factors such as temperature, humidity, and ultraviolet radiation (e.g., sunlight).

Transmission of SARS-CoV-2 from inhalation of virus in the air farther than six feet from an infectious source can occur

With increasing distance from the source, the role of inhalation likewise increases. Although infections through inhalation at distances greater than six feet from an infectious source are less likely than at closer distances, the phenomenon has been repeatedly documented under certain preventable circumstances.[10-21] These transmission events have involved the presence of an infectious person exhaling virus indoors for an extended time (more than 15 minutes and in some cases hours) leading to virus concentrations in the air space sufficient to transmit infections to people more than 6 feet away, and in some cases to people who have passed through that space soon after the infectious person left. Per published reports, factors that increase the risk of SARS-CoV-2 infection under these circumstances include:

- **Enclosed spaces with inadequate ventilation or air handling** within which the concentration of exhaled respiratory fluids, especially very fine droplets and aerosol particles, can build-up in the air space.
- **Increased exhalation** of respiratory fluids if the infectious person is engaged in physical exertion or raises their voice (e.g., exercising, shouting, singing).
- **Prolonged exposure** to these conditions, typically more than 15 minutes.

Top of Page

Prevention of COVID-19 transmission

The infectious dose of SARS-CoV-2 needed to transmit infection has not been established. Current evidence strongly suggests transmission from contaminated surfaces does not contribute substantially to new infections. Although animal studies[22-24] and epidemiologic investigations[25] (in addition to those described above) indicate

that inhalation of virus can cause infection, the relative contributions of inhalation of virus and deposition of virus on mucous membranes remain unquantified and will be difficult to establish. Despite these knowledge gaps, the available evidence continues to demonstrate that existing recommendations to prevent SARS-CoV-2 transmission remain effective. These include physical distancing, community use of well-fitting masks (e.g., barrier face coverings, procedure/surgical masks), adequate ventilation, and avoidance of crowded indoor spaces. These methods will reduce transmission both from inhalation of virus and deposition of virus on exposed mucous membranes. Transmission through soiled hands and surfaces can be prevented by practicing good hand hygiene and by environmental cleaning.

Top of Page

Summary of Updates

Updates from Previous Content

References

1. Stadnytskyi V, Bax CE, Bax A, Anfinrud P. The airborne lifetime of small speech droplets and their potential importance in SARS-CoV-2 transmission. *Proc Natl Acad Sci U S A*. Jun 2 2020;117(22):11875-11877. doi:10.1073/pnas.2006874117
2. Alsved M, Matamis A, Bohlin R, et al. Exhaled respiratory particles during singing and talking. *Aerosol Science and Technology*. 2020;54(11):1245-1248. doi:10.1080/02786826.2020.1812502
3. Echternach M, Gantner S, Peters G, et al. Impulse Dispersion of Aerosols during Singing and Speaking: A Potential COVID-19 Transmission Pathway. *Am J Respir Crit Care Med*. Dec 1 2020;202(11):1584-1587. doi:10.1164/rccm.202009-3438LE
4. Asadi S, Wexler AS, Cappa CD, Barreda S, Bouvier NM, Ristenpart WD. Aerosol emission and superemission during human speech increase with voice loudness. *Sci Rep*. Feb 20 2019;9(1):2348. doi:10.1038/s41598-019-38808-z
5. Asadi S, Wexler AS, Cappa CD, Barreda S, Bouvier NM, Ristenpart WD. Effect of voicing and articulation manner on aerosol particle emission during human speech. *PLoS One*. 2020;15(1):e0227699. doi:10.1371/journal.pone.0227699
6. Morawska L., Johnson GR, Ristovski ZD, et al. Size distribution and sites of origin of droplets expelled from the human respiratory tract during expiratory activities. *Aerosol Sci*. 2009;40(3):256-269.
7. Buonanno G, Stabile L, Morawska L. Estimation of airborne viral emission: Quanta emission rate of SARS-CoV-2 for infection risk assessment. *Environment international*. May 11 2020;141:105794. doi:https://dx.doi.org/10.1016/j.envint.2020.105794
8. Papineni RS, Rosenthal FS. The size distribution of droplets in the exhaled breath of healthy human subjects. *J Aerosol Med*. Summer 1997;10(2):105-16. doi:10.1089/jam.1997.10.105
9. Edwards DA, Ausiello D, Salzman J, et al. Exhaled aerosol increases with COVID-19 infection, age, and obesity. *Proc Natl Acad Sci U S A*. Feb 23 2021;118(8)doi:10.1073/pnas.2021830118
10. Bae S, Kim H, Jung TY, et al. Epidemiological Characteristics of COVID-19 Outbreak at Fitness Centers in Cheonan, Korea. *J Korean Med Sci*. Aug 10 2020;35(31):e288. doi:10.3346/jkms.2020.35.e288
11. Brlek A, Vidovic S, Vuzem S, Turk K, Simonovic Z. Possible indirect transmission of COVID-19 at a squash court, Slovenia, March 2020: case report. *Epidemiol Infect*. Jun 19 2020;148:e120. doi:10.1017/S0950268820001326
12. Cai J, Sun W, Huang J, Gamber M, Wu J, He G. Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020. *Emerging infectious diseases*. Mar 12 2020;26(6):12. doi:https://dx.doi.org/10.3201/eid2606.200412
13. Shen Y, Li C, Dong H, et al. Community Outbreak Investigation of SARS-CoV-2 Transmission Among Bus Riders in Eastern China. *JAMA Intern Med*. Dec 1 2020;180(12):1665-1671

doi:10.1001/jamainternmed.2020.5225

14. Groves LM, Usagawa L, Elm J, et al. Community Transmission of SARS-CoV-2 at Three Fitness Facilities — Hawaii, June–July 2020. *MMWR Morb Mortal Wkly Rep*. Feb 24 2021;70(Early Release)
15. Hamner L, Dubbel P, Capron I, et al. High SARS-CoV-2 Attack Rate Following Exposure at a Choir Practice – Skagit County, Washington, March 2020. *MMWR Morb Mortal Wkly Rep*. May 15 2020;69(19):606-610. doi:10.15585/mmwr.mm6919e6
16. Jang S, Han SH, Rhee JY. Cluster of Coronavirus Disease Associated with Fitness Dance Classes, South Korea. *Emerg Infect Dis*. Aug 2020;26(8):1917-1920. doi:10.3201/eid2608.200633
17. Lendacki FR, Teran RA, Gretsch S, Fricchione MJ, Kerins JL. COVID-19 Outbreak Among Attendees of an Exercise Facility — Chicago, Illinois, August–September 2020. *MMWR Morb Mortal Wkly Rep*. Feb 24 2021;70(Early Release)
18. Li Y, Qian H, Hang J, et al. Probable airborne transmission of SARS-CoV-2 in a poorly ventilated restaurant. *Build Environ*. Jun 2021;196:107788. doi:10.1016/j.buildenv.2021.107788
19. Lu J, Gu J, Li K, et al. COVID-19 Outbreak Associated with Air Conditioning in Restaurant, Guangzhou, China, 2020. *Emerging infectious diseases*. Apr 2 2020;26(7)doi:10.3201/eid2607.200764
20. Katelaris AL, Wells J, Clark P, et al. Epidemiologic Evidence for Airborne Transmission of SARS-CoV-2 during Church Singing, Australia, 2020. *Emerg Infect Dis*. Apr 5 2021;27(6)doi:10.3201/eid2706.210465
21. Charlotte N. High Rate of SARS-CoV-2 Transmission Due to Choir Practice in France at the Beginning of the COVID-19 Pandemic. *J Voice*. Dec 23 2020;doi:10.1016/j.jvoice.2020.11.029
22. Shi J, Wen Z, Zhong G, et al. Susceptibility of ferrets, cats, dogs, and other domesticated animals to SARS–coronavirus 2. *Science*. 2020:eabb7015. doi:10.1126/science.abb7015
23. Kim YI, Kim SG, Kim SM, et al. Infection and Rapid Transmission of SARS-CoV-2 in Ferrets. *Cell host & microbe*. Apr 5 2020;doi:10.1016/j.chom.2020.03.023
24. Kutter JS, de Meulder D, Bestebroer TM, et al. SARS-CoV and SARS-CoV-2 are transmitted through the air between ferrets over more than one meter distance. *Nat Commun*. Mar 12 2021;12(1):1653. doi:10.1038/s41467-021-21918-6
25. Klompas M, Baker MA, Rhee C, et al. A SARS-CoV-2 Cluster in an Acute Care Hospital. *Ann Intern Med*. Feb 9 2021;doi:10.7326/M20-7567

Top of Page

Last Updated May 7, 2021
Content source: National Center for Immunization and Respiratory Diseases (NCIRD), Division of Viral Diseases

Science & Research

Science Agenda for COVID-19

Weekly Review +

Science Briefs −

Science Brief: Indicators for Monitoring COVID-19 Community Levels and Making Public Health Recommendations

SARS-CoV-2 Infection-induced and Vaccine-induced Immunity

COVID-19 Vaccines and Vaccination

SARS-CoV-2 Transmission

SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments

Get Email Updates

To receive email updates about COVID-19, enter your email address:

Email Address

What's this?

Submit

EXIBIT #20

As of 07/07/2022 10:15AM, the Laws database is current through 2022 Chapters 1-375

Public Health

ARTICLE 21

CONTROL OF ACUTE COMMUNICABLE DISEASES

As of 07/07/2022 10:15AM, the Laws database is current through 2022
Chapters 1-375

New York City Administrative Code

§ 17-109 Vaccinations. a. The department is empowered to collect and preserve pure vaccine lymph or virus, produce diphtheria antitoxin and other vaccines and antitoxins, and add necessary additional provisions to the health code in order to most effectively prevent the spread of communicable diseases.

b. The department may take measures, and supply agents and offer inducements and facilities for general and gratuitous vaccination, disinfection, and for the use of diphtheria antitoxin and other vaccines and antitoxins.

As of 07/07/2022 10:15AM, the Laws database is current through 2022 Chapters 1-375

Public Health

§ 2194. Employee immunization. 1. Every long-term care facility shall notify every employee of the immunization requirements of this article and request that the employee agree to be immunized against influenza virus and pneumococcal disease.

2. The long-term care facility shall require documentation of annual immunization against influenza virus and immunization against pneumococcal disease for each employee. Upon finding that an employee is lacking such immunization or the long-term care facility or individual is unable to provide documentation that the individual has received the appropriate immunization, the long-term care facility must provide or arrange for immunization. Immunization and the documentation thereof shall take place no later than November thirtieth of each year.

3. An individual who is newly employed as an employee after November thirtieth but before April first shall have his or her status for influenza and pneumococcal immunization determined by the facility, and if found to be deficient, the facility shall provide or arrange for the necessary immunization.

EXHIBIT

New York Consolidated Laws, Public Health Law - PBH § 206. Commissioner; general powers and duties

Current as of January 01, 2021 | Updated by FindLaw Staff

1. The commissioner shall:

(a) take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law;

(b) exercise general supervision over the work of all local boards of health and health officers, unless otherwise provided by law;

(c) exercise general supervision and control of the medical treatment of patients in the state institutions, public health centers and clinics in the department;

(d) investigate the causes of disease, epidemics, the sources of mortality, and the effect of localities, employments and other conditions, upon the public health;

(e) obtain, collect and preserve such information relating to marriage, birth, mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state; establish rules and regulations for the determination of asymptomatic conditions including, but not limited to RH sensitivity, anemia, sickle cell anemia, cooley's anemia and venereal disease;

(f) enforce the public health law, the sanitary code and the provisions of the medical assistance program, or its successor, pursuant to titles eleven, eleven-A and eleven-B of the social services law, as amended by this chapter;

(g) cause to be made from time to time examinations and inspections of the sanitary conditions of each state institution and transmit copies of the reports and recommendations thereon to the head of the state department having jurisdiction over the institution examined;

(h) cause to be made from time to time, examinations and inspections of all labor camps and enforce the provisions of the sanitary code relating thereto;

(i) cause to be made, from time to time, examinations and inspections of all Indian reservations, and enforce

all provisions of the sanitary code relating thereto.

(j) cause to be made such scientific studies and research which have for their purpose the reduction of morbidity and mortality and the improvement of the quality of medical care through the conduction of medical audits within the state. In conducting such studies and research, the commissioner is authorized to receive reports on forms prepared by him and the furnishing of such information to the commissioner, or his authorized representatives, shall not subject any person, hospital, sanitarium, rest home, nursing home, or other person or agency furnishing such information to any action for damages or other relief. Such information when received by the commissioner, or his authorized representatives, shall be kept confidential and shall be used solely for the purposes of medical or scientific research or the improvement of the quality of medical care through the conduction of medical audits. Such information shall not be admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency, or person.

(k) notwithstanding any other provision of law, with the advice and assistance of the commissioner of agriculture and markets, establish rules and regulations to require such treatment of food or food products, including the addition or removal of specific substances, as may be necessary for the protection of the public health against the hazards of ionizing radiation.

(l) establish and operate such adult and child immunization programs as are necessary to prevent or minimize the spread of disease and to protect the public health. Such programs may include the purchase and distribution of vaccines to providers and municipalities, the operation of public immunization programs, quality assurance for immunization related activities and other immunization related activities. The commissioner may promulgate such regulations as are necessary for the implementation of this paragraph. Nothing in this paragraph shall authorize mandatory immunization of adults or children, except as provided in sections twenty-one hundred sixty-four and twenty-one hundred sixty-five of this chapter.

(m) make such rules and regulations which may be necessary to require pre-employment physical examination and thereafter require such annual examinations of all hospital employees for discovery of tuberculosis and other communicable diseases as he deems necessary for the safety and well being of the people of the state.

(n) by rule and regulation establish criteria for identification of areas and conditions involving high risk of lead poisoning, specify methods of detection of lead in dwellings, provide for the administration of prescribed tests for lead poisoning and the recording and reporting of the results thereof, and provide for professional and public education, as may be necessary for the protection of the public health against the hazards of lead poisoning.

(*o*) establish and publish a list of drug products, each of which shall meet the following conditions:

(1) The drug product has been certified or approved by the commissioner of the Federal Food and Drug Administration as being safe and effective for its labeled indications for use, and a new-drug application or an abbreviated new-drug application approved pursuant to the Federal Food, Drug, and Cosmetic Act [1] is held for such drug product; and

(2) [Eff. until Oct. 23, 2022, pursuant to L.2017, c. 357, § 5. See, also, subpar. (2), below.] The commissioner of the Federal Food and Drug Administration has evaluated such drug product as:

(i) pharmaceutically and therapeutically equivalent and has listed such drug product on the list of approved drugs products with the therapeutic equivalence evaluations, provided, however, that the list prepared by the commissioner shall not include any drug product which the commissioner of the Federal Food and Drug Administration has identified as having an actual or potential bioequivalence problem; or

(ii) as an interchangeable biological product and has listed such product on the list of approved drug products with interchangeability.

(2) [Eff. Oct. 23, 2022, pursuant to L.2017, c. 357, § 5. See, also, subpar. (2), above.] The commissioner

EXIBIT #21

As of 07/07/2022 10:15AM, the Laws database is current through 2022
Chapters 1-375

New York City Administrative Code

§ 17-109 Vaccinations. a. The department is empowered to collect and preserve pure vaccine lymph or virus, produce diphtheria antitoxin and other vaccines and antitoxins, and add necessary additional provisions to the health code in order to most effectively prevent the spread of communicable diseases.

b. The department may take measures, and supply agents and offer inducements and facilities for general and gratuitous vaccination, disinfection, and for the use of diphtheria antitoxin and other vaccines and antitoxins.

EXIBIT #22

Medicine

- Laws, Rules & Regulations
- Child Abuse Training
- Infection Control Training
- NYSDOH Mandatory Prescriber Education
- Frequently Asked Questions
- Installation of Eye Drops
- Consumer Information
- Contact Information
- Verifications
- License Statistics
- Practice Information
- International Medical School Advisory Committee
- Professional Assistance Program

Physician

- License Requirements
- Conferral of M.D. Degree
- Acupuncture Certification
- Application Forms
- Electronic Prescribing
- Physician Loan Forgiveness Program

Physician Assistant

- License Requirements
- Application Forms
- Electronic Prescribing

Specialist Assistant

- License Requirements
- Application Forms

NYSED / OP / Professions / Medicine / Laws, Rules & Regulations / Article 140

Education Law

Article 131, Medicine

Effective June 18, 2010

§6520. Introduction.

This article applies to the profession of medicine. The general provisions for all professions contained in article one hundred thirty of this title apply to this article.

§6521. Definition of practice of medicine.

The practice of the profession of medicine is defined as diagnosing, treating, operating or prescribing for any human disease, pain, injury, deformity or physical condition.

§6522. Practice of medicine and use of title "physician".

Only a person licensed or otherwise authorized under this article shall practice medicine or use the title "physician".

§6523. State board for medicine.

A state board for medicine shall be appointed by the board of regents on recommendation of the commissioner for the purpose of assisting the board of regents and the department on matters of professional licensing in accordance with section sixty-five hundred eight of this title. The board shall be composed of not less than twenty physicians licensed in this state for at least five years, two of whom shall be doctors of osteopathy. To the extent such physician appointees are available for appointment, at least one of the physician appointees to the state board for medicine shall be an expert on reducing health disparities among demographic subgroups, and one shall be an expert on women's health. The board shall also consist of not less than two physician's assistants licensed to practice in this state. The participation of physician's assistant members shall be limited to matters relating to article one hundred thirty-one-B of this chapter. An executive secretary to the board shall be appointed by the board of regents on recommendation of the commissioner and shall be either a physician licensed in this state or a non-physician, deemed qualified by the commissioner and board of regents.

§6524. Requirements for a professional license.

To qualify for a license as a physician, an applicant shall fulfill the following requirements:

1. Application: file an application with the department;
2. Education: have received an education, including a degree of doctor of medicine, "M.D.", or doctor of osteopathy, "D.O.", or equivalent degree in accordance with the commissioner's regulations;
3. Experience: have experience satisfactory to the board and in accordance with the commissioner's regulations;
4. Examination: pass an examination satisfactory to the board and in accordance with the commissioner's regulations;
5. Age: be at least twenty-one years of age; however, the commissioner may waive the age requirement for applicants who have attained the age of eighteen and will be in a residency program until the age of twenty-one;
6. Citizenship or immigration status: be a United States citizen or an alien lawfully admitted for permanent residence in the United States; provided, however that the board of regents may grant a three year waiver for an alien physician to practice in an area which has been designated by the department as medically underserved, except that the board of regents may grant an additional extension not to exceed six years to an alien physician to enable him or her to secure citizenship or permanent resident status, provided such status is being actively pursued; and provided further that the board of regents may grant an additional three year waiver, and at its expiration, an extension for a period not to exceed six additional years, for the holder of an H-1b visa, an O-1 visa, or an equivalent or successor visa thereto;
7. Character: be of good moral character as determined by the department; and
8. Fees: pay a fee of two hundred sixty dollars to the department for admission to a department conducted examination and for an initial license, a fee of one hundred seventy-five dollars for each reexamination, a fee of one hundred thirty-five dollars for an initial license for persons not requiring admission to a department conducted examination, a fee of five hundred seventy dollars for any biennial registration period commencing August first, nineteen hundred ninety-six and thereafter. The comptroller is hereby authorized and

UNAUTHORIZED PRACTICE OF A PROFESSION
(E Felony)
EDUCATION LAW 6512 (1)

The (*specify)* count is Unauthorized Practice of a Profession.

Under our law, a person is guilty of the Unauthorized Practice of a Profession when he or she,

Select the appropriate alternative:

not being authorized to practice (*specify profession*) for which a license is a prerequisite, practices or offers to practice or holds himself or herself out as being able to practice *(specify profession).*

practices (*specify the profession*) as an exempt person during the time when his or her professional license is suspended, revoked or annulled.

aids or abets an unlicensed person to practice (*specify the profession*).[1]

fraudulently sells, files, furnishes, obtains, or who attempts fraudulently to sell, file, furnish or obtain any diploma,

---

[1] *People v Santi*, 3 NY3d 234 (2004) explained: "In interpreting the statute we are guided by a well-settled principle of statutory construction: courts normally accord statutes their plain meaning, but 'will not blindly apply the words of a statute to arrive at an unreasonable or absurd result'. Indeed, '[t]he primary consideration of the courts in the construction of statutes is to ascertain and give effect to the intention of the Legislature'. Legislative intent drives judicial interpretations in matters of statutory construction . . . If the phrase 'not authorized to practice under this title' modified the pronoun '[a]nyone' as defendant urges, the statute would necessarily be applied in an unreasonable manner . . . We conclude that Education Law § 6512 (1) does not exempt licensed physicians from prosecution under the statute. To the contrary, section 6512 (1) allows for the prosecution of any individual, licensed or not, that aids and abets an unauthorized individual in the practice of medicine."

license, record or permit purporting to authorize the practice of (*specify the profession*).

The following terms used in that definition have a special meaning:

To "practice" the profession of (*specify the object profession*) means to (*read the applicable portion of the statutory definition of the object profession*)[2].

[An "exempt person" is (*read the applicable portion of the statutory definition for the object profession*)[3].]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in this case, beyond a reasonable doubt, each of the following two elements:

1. That on or about (*date*), in the County of (*County*), the defendant, (*defendant's name*),

Select the appropriate element two:

2. not being authorized to practice (*specify the profession*) for which a license is a prerequisite, practiced or offered to practice or held himself or herself out as being able to practice *(specify the profession).*

2. practiced (*specify the profession*) as an exempt person during the time when his or her professional license was suspended, revoked or annulled.

2. aided or abetted an unlicensed person to practice (*specify the profession*).

2. fraudulently sold, filed, furnished, obtained, or attempted

---

[2] See Education Law §§ 6500 - 8800 for definitions of each profession.

[3] See Education Law §§ 6500 - 8800 for definitions of each profession.

fraudulently to sell, file, furnish or obtain any diploma, license, record or permit purporting to authorize the practice of (*specify the profession*).

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

EXIBIT #25

Overview

- Initial Approval: June 01, 1984 (49 FR 23000)
- State Plan Certification: August 16, 2006 (71 FR 47089)

The New York Public Employee Safety and Health (PESH) Bureau is part of the New York Department of Labor. The New York Department of Labor is headed by the Commissioner. The main office is located in Albany with nine district offices located throughout the state.

Coverage

New York PESH coversall state and local government workers in the state. It does not cover federal government workers. Federal government workers, including those employed by the United States Postal Service and civilian workers on military bases, are covered by OSHA. OSHA also exercises authority over private sector employers in the state and federal OSHA standards apply to these workers. A brief summary of the New York State Plan is included in the Code of Federal Regulations (CFR) at 29 CFR 1952.24. OSHA retains the authority to monitor the State Plan under Section 18(f) of the OSH Act.

State Plan Standards and Regulations

New York PESH has generally adopted all OSHA standards applicable to state and local government employment. In addition, the Commissioner has the authority to develop alternative and/or state-initiated standards to protect the safety and health of state and local government workers in New York in consultation with the Hazard Abatement Board. The procedures for adoption of alternative standards contain criteria for consideration of expert technical advice and allow interested persons to request development of any standard and to participate in any hearing for the development or modification of standards. PESH's state-initiated standards include:

- Workplace Violence Prevention – 12 NYCRR Part 800.6
- Emergency Escape and Self-Rescue Ropes and System Components for Firefighters (*in cities below one million residents*)– 12 NYCRR Part 800.7
- Permissible Exposure Limits – 12 NYCRR Part 800.5
- Right-to-Know – 12 NYCRR Part 820

New York PESH also has its own regulation on the recording and reporting of occupational injuries and illnesses (12 NYCRR Part 801).

Enforcement Programs

New York PESH utilizes its Field Operations Manual (FOM) which provides policy guidance for its enforcement program. The Enforcement Branch conducts unannounced mandatory inspections which results in a "Notice of Violation and Order to Comply" for hazards and/or violations of OSHA standards. Abatement periods to comply with the violations are established and verification of abatement is required. Penalties may be assessed for failure to comply with abatement orders. For more information on these programs, please visit the New York State Plan website.

Voluntary and Cooperative Programs

New York PESH offers voluntary and cooperative programs that focus on reducing injuries, illnesses, and fatalities. New York PESH also offers on-site consultation services which help employers comply with PESH's standards and identify and correct potential safety and health hazards. New York DOSH also has an agreement with OSHA, under Section 21(d) of the OSH Act, to provide free on-site consultation services to the private sector. For more information on these programs, please visit the New York State Plan website.

Informal Conferences and Appeals

Employers and workers may seek formal administrative review of New York Department of Labor notices and orders to comply by petitioning the New York Industrial Board of Appeals (IBA) no later than 60 days after the issuance of the notice and order. The IBA is the independent state agency authorized by McKinney's Labor Law §27(a)(6)(c) to consider petitions from affected parties for review of the Commissioner of Labor's determinations. For more information on these proceedings

Contact Information

New York Department of Labor

Roberta Reardon, Commissioner
(518) 457-2746
(518) 457-5545

Division of Safety and Health

Public Employee Safety and Health (PESH) Bureau Governor W. Averell Harriman State Building Campus, Building 12, Room 158

Albany, New York 12240

(518) 457-1263
(518) 457-5545

Division of Safety and Health (DOSH)

Amy Phillips, CSP, Director
(518) 457-9068

Public Employee Safety and Health Bureau

Raynard Caines, PESH Assistant Program Manager
(212) 775-3357
Raynard Caines

Darren Mrak, PESH Program Manager 2
(585) 258-4518
Darren Mrak

John Usher, Program Manager 1 (Industrial Hygiene)
(518) 457-5508
John Usher

Olushola Abolarinwa, Program Manager 1 (Downstate Districts)
(347) 595-6338
Olushola Abolarinwa

please visit the New York State Plan website.

N.Y. Comp. Codes R. & Regs. tit. 12 § 800.3

Current through Register Vol. 44, No. 27, July 6, 2022

Section 800.3 - Adoption of standards

The Commissioner of Labor adopts, as the occupational safety and health standards for the protection of the safety and health of public employees, all of the standards in the below-listed parts of Title 29 of the Code of Federal Regulations:

Part 1910--General Industry Standards; June 1, 2016 edition, with the exception of Section 1910.1000 -Air Contaminants, which is addressed by Section 800.5 of this Part.

Part 1915--Shipyard Employment Standards; June 1, 2016 edition

Part 1917--Marine Terminals Standards; June 1, 2016 edition

Part 1918--Longshoring Standards; June 1, 2016 edition

Part 1926--Construction Standards; June 1, 2016 edition

Part 1928--Agricultural Standards; June 1, 2016 edition

N.Y. Comp. Codes R. & Regs. Tit. 12 § 800.3

Adopted New York State Register April 26, 2017/Volume XXXIX, Issue 17, eff.4/26/2017

TOP (#top)

Public Employee Safety & Health

SECTIONS

EW ORK TATE

nt of Labor (/)

afety and Health (/safety-and-health)

ublic Employee Safety & Health

Overview

The Public Employee Safety and Health Bureau (PESH), created in 1980, enforces safety and health standards promulgated under the United States Occupational Safety and Health Act (OSHA (https://www.osha.gov/)) and several state standards.

The Public Employee Safety and Health (PESH) Act (https://www.nysenate.gov/legislation/laws/LAB/27-A) created this unit to give occupational safety and health protection to all public sector employees.

Public sector employers include:

- State
- County
- Town

TOP (#top)

Public Employee Safety & Health

- School Districts
- Paid and Volunteer Fire Departments

The Public Employee Safety and Health Bureau responds to:

- Deaths related to occupational safety and health
- Accidents that send two or more public employees to the hospital
- Complaints from public employees or their representatives

The Public Employee Safety and Health Bureau also:

- Inspects public employer work sites
- Gives technical assistance during statewide emergencies

SEE PUBLIC EMPLOYEE SAFETY & HEALTH FREQUENTLY ASKED QUESTIONS

(/public-employee-safety-and-health-programs-frequently-asked-questions)

To help prevent heat-related fatalities and illness among New York's public sector workers, the Public Employee Safety and Health (PESH) Bureau adopted OSHA's Heat National Emphasis Program (NEP) on June 8, 2022. The purpose of the NEP is to better protect workers from the hazards associated with outdoor work during heat waves, and indoor work near radiant heat sources. Heat stress can be safely managed using time-proven measures that are simple, common sense, and low cost. PESH has slightly altered implementation to cover appropriate public sector industries (see list below) and to allow for available resources. Protective measures will be assessed during

TOP (#top)

Public Employee Safety & Health

Inspection Procedures for Inspections (#reference-materials-for-inspections)
Overview (#overview)
Employee Injury and Illness Recordkeeping Services - PESH Can Help (#employee-injury-and-illness-recordkeeping-services---pesh-can-help)
File a Additional Complaint Resources (#file-a-additional-complaint-resources)
Petition to Modify an Abatement Date (#petition-to-modify-an-abatement-date)
How to Contact Us (#how-to-contact-us)
Reference Materials for Inspections (#reference-materials-for-inspections)

ensure that procedures are in place before it is too late to implement them.

NAICS Code	Industry Description
2213	Water, Sewage and Other (Heating) Systems
2373	Highway, Street and Bridge Construction (Highway, DPW)
6117	Educational Support Services (Food Preparation/Groundskeeping/Maintenance)
622110	General Medical and Surgical Hospitals (Food Preparation/Laundry)
623110	Health Services, Nursing Home (Food Preparation/Laundry)
922160	Fire Protection
712190	Nature Parks and Other Similar Institutions (Groundskeeping/Maintenance)
922141	Correctional Institutions (Food Preparation/Laundry)
985112	Commuter Rail Systems (Multi-level Terminals/Stations)

More information about the OSHA initiative and helpful resources can be found on the OSHA website (https://www.osha.gov/heat) .

Check out our Consultation Program fact sheet (/consultation-assistance-fact-sheet-p-206) to learn how to ask for free and confidential assistance.

Important Notice:

Inspe TOP (#top)
(#reference-
SECTIONS
for-
inspections)
Overview
(#overview)
Employee
Injury and
Services -
Illness
PESH Can
Recordkeeping
Help
(#employee-
(#services---
injury-and-
pesh-can-
illness-
help)
recordkeeping)
File a
Additional
Complaint
Resources
(#file-a-
(#additional-
complaint)
resources)
Petition to
How to
Modify an
Contact Us
Abatement
(#how-to-
Date
contact-us)
(#petition-
to-modify-
an-
abatement-
date)

Public Employee Safety & Health

Employee Safety and Health (PESH) Bureau has adopted the OSHA Emergency Temporary Standard (ETS) for Healthcare on October 21, 2021 for public employers in New York State. The ETS will remain in effect for 90 days until January 18, 2022, at which time it may be extended if appropriate. The healthcare ETS establishes new requirements for settings where employees provide healthcare or healthcare support services, including skilled nursing homes and home healthcare, with some exemptions for healthcare providers who screen out patients who may have COVID-19. More information about the rule and ways to implement it can be found at the COVID-19 Healthcare ETS website (https://www.osha.gov/coronavirus/ets) .

Effective 6/21/2021, OSHA has issued an Emergency Temporary Standard (ETS) to address the danger COVID-19 poises to public healthcare workers. Under the ETS, employers must follow requirements such as screening patients, cleaning and disinfecting surfaces, installing physical barriers, and more. The goal is to protect workers facing the highest COVID-19 hazards.

For more information, visit the COVID-19 Healthcare ETS website (https://www.osha.gov/coronavirus/ets) .

NEXT SECTION Continue (#) ↓

Services - PESH Can Help (#)

Reference
Materials
for

EXIBIT #26

NEW YORK STATE Corrections and Community Supervision **DIRECTIVE**	TITLE **Respiratory Protection Program**		NO. 4068 DATE 05/18/2021
SUPERSEDES DIR # 4068 Dtd. 02/24/21	DISTRIBUTION A	PAGES PAGE 1 OF 12	DATE LAST REVISED
REFERENCES (Include but are not limited to) OSHA 29 CFR 1910.134; 12 NYCRR Part 56; Directives #2121, #4054, #4903	APPROVING AUTHORITY Tom Mouth		

Contents:

I. PURPOSE: The elements described in this program are designed to ensure the safe and effective usage of respiratory protection, including respiratory protection for Mycobacterium (M.) tuberculosis and other airborne pathogens, at all of the facilities of the Department of Corrections and Community Supervision (DOCCS).

II. POLICY: The Department shall maintain a Respiratory Protection Program in compliance with Occupational Safety and Health Administration (OSHA) Standards, 29 CFR 1910.134, for Respiratory Protection. Employees (or contracted personnel) who are assigned, or wish to be assigned, to positions wherein respiratory use is, or may be, required shall be medically cleared and trained for use of the particular respirator(s) required for those positions.

Any employee (or contracted personnel) who is required to wear a tight-fitting respirator must not have facial hair that comes between the sealing surface of the face piece and the face or that interferes with respirator valve function.

III. SCOPE: This directive will apply to all employees (or contracted personnel) who work in settings in which one or more of the following conditions are present where the air:

A. Lacks adequate oxygen;

B. Is contaminated with harmful levels of dust, fumes, mists, gases, smoke, fogs, sprays, fibers, or vapors;

C. May be contaminated due to the sudden release of dusts, fumes, mists, gases, smoke, fogs, sprays, fibers, or vapors; and

D. May be contaminated with tuberculosis or other airborne pathogens.

IV. DEFINITIONS

A. Air Purifying Respirator (APR): An APR means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

B. Clearance: The term "clearance" shall refer to the successful completion of medical assessment, occupational physical training (if necessary), and fit testing with a respirator. All users will have clearance.

C. End of Service Life Indicator (ESLI): An ESLI means a system that warns the respirator user of the approach of the end of adequate respiratory protection, for example, that the chemical cartridge is no longer effective.

D. N95/P100: The filtering face piece mask is a negative pressure particulate respirator with a filter as an integral part of the face piece, or the entire face piece is composed of the filtering medium.

E. Fit Test: Means the use of protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual. A fit test is conducted as part of initial training and annually thereafter. For an adequate fit test, an employee must not have facial hair that comes between the sealing surface of the face piece and the face or that interferes with respirator valve function.

F. Fit Factor: Means a quantitative estimate of the fit of a particular respirator to a specific individual and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

G. Qualitative Fit Test: Means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

H. Quantitative Fit Test: Means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

I. Immediately Dangerous to Life or Health (IDLH): An IDLH atmosphere means one that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

J. Chemical Agent Protective Mask: The chemical agent protective mask is the air-purifying respirator used to protect the face, eyes, and respiratory tract from chemical agents.

K. Medical Evaluation: Any staff required to wear a respirator must be medically evaluated to determine the employee's ability to use a respirator. The medical evaluation, Form #EHS-701.8, "Medical Assessment for Respirator Use," will, at a minimum, include a review of the medical assessment questionnaire. The medical evaluation shall be conducted by a physician or other licensed health care provider.

L. Occupational Physical: The term "occupational physical" shall refer to a comprehensive physical examination of any employee who did not clear the "medical assessment" and of other employees referenced in Section VII-B-1-a and b of this directive.

M. Respirators or Respiratory Protection Devices: The terms "respirator or respiratory protection device" shall refer to an approved device worn by an employee to either supply or purify their breathing air. Respiratory protection devices fall into four classes: Filtering Face Piece (FFP) such as the single use N95 or P100 respirator, air-purifying, atmosphere or air-supplying, and combination air-purifying and air-supplying devices.

N. Seal Check: A "seal check" is defined as a test conducted by the wearer to determine if the respirator is properly sealed to the face. It is repeated each time the respirator is donned or adjusted. For an adequate seal check, an employee must not have facial hair that comes between the sealing surface of the face piece and the face or that interferes with respirator valve function.

O. Self-Contained Breathing Apparatus (SCBA): SCBA refers to an atmosphere-supplying respirator for which the breathing-air source is designed to be carried by the user.

P. Tight-Fitting Face Piece: The term "tight-fitting face piece" means a respiratory inlet covering that forms a complete seal with the face.

Q. Users of Respiratory Protection Masks: Any employee expected to wear a single use respirator mask for contaminants, a cartridge mask such as a chemical agent protective mask, or other respiratory protection device in the performance of their duties shall be considered to be a user of a respirator or respiratory protection device.

R. Physician or Other Licensed Health Care Professional (PLHCP): This term means an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows them to independently provide, or be delegated the responsibility to provide, some or all of the health care services.

V. PROGRAM ADMINISTRATION

A. The Fire/Safety Coordinator: Responsible for the overall administration of the Department's Respiratory Protection Program.

B. The Deputy Superintendent for Administration (DSA) (or equivalent): The DSA is responsible for the overall implementation and maintenance of the facility Respiratory Protection Program and ensuring that the following duties are performed by supervisors, respiratory coordinators, and employees (or contracted personnel):

1. Tasks requiring respiratory protection are identified;
2. Proper respiratory protection is selected for each specific application;
3. Medical evaluations and occupational physical examination (where necessary) for respirator users is implemented;
4. Employee training and fit testing is conducted; and
5. The Respiratory Protection Program is continually evaluated and is achieving its desired goal.

C. The Respiratory Coordinator(s) (as designated by the DSA): Responsibilities include, but are not limited to:

1. Ensuring that respirators that are approved for the specific task are issued to the users;
2. Ensuring users are medically qualified and fit tested; and
3. Ensuring users are properly trained.

Examples of appropriate staff acting as respiratory coordinators include: Fire/Safety Officer (SCBA); Weapons Training Officer (chemical agent protective mask); Nurse Administrator or equivalent (N95 or P100 respirators); and Plant Superintendent (organic vapor respirators). Respirator selection will be based upon the following elements:

a. The types and concentrations of airborne contaminant(s);
b. The characteristics and locations of hazardous areas;
c. The workers' activities in hazardous areas;
d. The capabilities and limitations of the respirator; and
e. Duration of respirator use.

D. Supervisors: Are responsible for ensuring the appropriate respirators are available for use and:

1. Ensuring that employees (or contracted personnel) wear the required respirators;
2. Ensuring that employees (or contracted personnel) are adequately maintaining their respirators; and
3. Ensuring that employees (or contracted personnel) clean, maintain, and properly store respirators after use.

NOTE: Supervisors will ensure that employees who are not qualified to wear respirators are not assigned to posts or jobs that require respirator use.

E. Employees (or contracted personnel): Are responsible for:

1. Using the respirator in accordance with the training received; and
2. Inspecting, cleaning, sanitizing, and properly storing the respirator.

VI. RESPIRATOR SELECTION

A. The employer shall select and provide an appropriate respirator, as determined by the Respiratory Coordinator, based on:

- The respiratory hazard(s) to which the worker is exposed; and
- Workplace and user factors that affect respirator performance and reliability.

B. The employer shall select a National Institute of Occupational Safety and Health (NIOSH) certified respirator. The respirator shall be used in compliance with conditions of its certification.

C. The employer shall identify and evaluate the respiratory hazard(s) in the workplace; this evaluation shall include a reasonable estimate of employee exposure to respiratory hazard(s) and an identification of the contaminant's chemical state and physical form. Where the employer cannot identify or reasonably estimate the employee exposure, the employer shall consider the atmosphere to be IDLH. The type of respirator selected shall be indicated on the Hazard Assessment Form #2121B, in accordance with Directive #2121, "Personal Protective Equipment."

D. The employer shall select respirators from a sufficient number of respirator models and sizes so that the respirator is acceptable to, and correctly fits, the user.

E. Respirators currently approved for use by DOCCS staff are:

NOTE: Facilities using respirators in addition to the ones listed below shall add those respirators to the list.

Respirator Manufacturer	Model	Work Task	Substance	Concentration
Scott	Fifty	Firefighting		
Avon	C-50	Cell Extraction	Chemical Agent	Chem. Agent Lesson Plan
Kimberly Clark	N95	Infection Control	Tuberculosis (or	
Wilson	N95	Infection Control	other airborne pathogen)	
		Lead Abatement		
		Asbestos Abatement		
3M	P100 (8293)	Drug Testing		

F. Employees (or contracted personnel) are trained to abide by specific work procedures detailed in Section IX of this directive. If the work procedures are followed, exposures to hazardous materials should be well below permissible exposure limits.

VII. MEDICAL EVALUATIONS (ALL RESPIRATORS): Using a respirator may place a physiological burden on an employee that varies with the type of respirator worn, the job, the workplace conditions in which the respirator is used, and the medical status of the employee. The following procedure will determine an employee's ability to wear respiratory protection equipment. Successful completion of the medical evaluation is required prior to training or fit testing.

A. Medical Evaluation: The Personnel Office will make Form #EHS-701.8, "Medical Assessment for Respirator Use," available to all employees who wear respirators. Upon completion of the medical assessment questionnaire by the employee, the form will be sent to Civil Service Employee Health Services. The medical assessment questionnaire will be reviewed by a physician or other licensed health care professional for medical clearance.

Employees who have been medically cleared based on the medical assessment questionnaire review will be notified via Form #1236, "Respirator Clearance Report." Employees who cannot be cleared for respirator use based upon the questionnaire alone will receive an appropriate occupational physical for possible clearance. Civil Service Employee Health Services staff will conduct these examinations at selected locations within each HUB.

Form #EHS-701.8 will be maintained by Civil Service Employee Health Services within the employee's medical record. Form #1236 will be sent to the Personnel Office for entry into the KOCH system and then filed within the confidential employee personnel medical file; a copy will also be given to the employee. This review must be successfully completed prior to an employee being assigned to a position where respirator use may be necessary.

1. This evaluation will be repeated per the reviewer's recommendations, and when:
   a. The employee (or contracted personnel) reports medical signs or symptoms related to the ability to wear the respirator;

b. The supervisor or Respiratory Coordinator informs the DSA that an employee (or contracted personnel) needs to be reevaluated;

c. Observations made during fit testing and program evaluation indicate need;

d. A change occurs in workplace conditions (e.g., change in physical work effort, protective clothing, temperature) that may result in substantial increase in the physiological burden placed on an employee (or contracted personnel); or

e. A maximum of five years has passed since the last evaluation.

B. Occupational Physical

1. An occupational physical shall be conducted initially and periodically as determined by Form #1236, and:

a. For employees (or contracted personnel) who are members of the facility Fire Response Team and who are Firefighter I certified to wear a Self-Contained Breathing Apparatus (SCBA), Correctional Emergency Response Team, and members of Confined Space Rescue Teams who are Firefighter I certified to wear SCBA or supplied air respirator. Staff who have been selected to participate in a Firefighter I class must be medically cleared prior to the class;

b. For any other employees (or contracted personnel) required to wear other types of respirators, or based on occupational need (e.g., asbestos workers, Weapons Training Officers, pesticide applicators, staff who are part of the Department's Hearing Conservation Program, Powerhouse staff, etc.); and

c. For employees (or contracted personnel) who require clearance for use of respirator masks, but who were not cleared through the medical evaluation procedure per Section VII-A.

2. If an individual (or contracted personnel) chooses to utilize their personal physician for respiratory clearance or an occupational physical, this will be done on their own time and expense. A copy of this directive will be provided to the medical professional performing the medical evaluation. Form #1236 must be completed by the physician and returned to the Personnel Office for entry into the KOCH system.

C. Respirator Clearance Report: The physician or other licensed health care professional determining an employee's (or contracted personnel's) ability to use required respiratory protection will provide both the facility Personnel Office and the employee (or contracted personnel) with a completed Form #1236.

VIII. FIT TESTING

A. It is well recognized that no one respirator will fit every individual. Therefore, employees (or contracted personnel) using tight-fitting face piece respirators will be fit-tested at initial training to ensure a proper fit. Staff must be medically cleared prior to a fit testing being conducted and the clearance must be current.

B. Fit testing will be performed:

1. On an annual basis;

2. Whenever the employee (or contracted personnel) uses a different respirator face piece (size, style, model, or make);

3. If the employee's (or contracted personnel's) physical condition changes affecting the respirator fit (e.g., facial scarring, dental changes, cosmetic surgery, obvious change in body weight); or
4. The employee fails a seal check.

C. For employee (or contracted personnel) safety, an employee (or contracted personnel) must not have facial hair that comes between the sealing surface of the face piece and the face or that interferes with respirator valve function. If it is determined by the operator conducting the fit test that an employee does have facial hair that comes between the sealing surface of the face piece, or that interferes with respirator valve function, the fit test of the employee will not be conducted at this time and will not be conducted until the employee meets the requirements to be fit tested.

D. If corrective eyeglasses or goggles are worn by employees (or contracted personnel), they shall be worn so as not to affect the fit of the face piece. When corrective lenses are necessary, prescription lenses and holders will be provided by the Department using the Wallkill Optic Lab Form #4068A, "Corcraft/DOCCS Eyewear."

E. Fit testing of tight-fitting full-face respirators with a fit factor of over 500 will require a quantitative fit test using the Quantifit Machine per the manufacturer's protocols. A signed copy of the fit test will be sent to Personnel and a copy will be given to the employee who was fit tested.

F. Fit testing of N95 or P100 Disposable Filter Respirator (dust mask type only) will require completion of Form #4068D, "N95 or P100 Disposable Filter Respirator (Dust Mask Type Only) Fit Test Record," and is to be forwarded to Personnel for KOCH and Human Resources Training (KHRT) entry and filing.

IX. RESPIRATOR USE

A. Employees (or contracted personnel) who are not medically cleared or whose clearance has expired may not wear a respirator or work a respirator post.

B. Employees wearing tight fitting respirators will perform a seal check each time they put on a respirator. The seal check will be performed per the manufacturer's instruction.

C. Continuing Respirator Effectiveness

1. When there is a change in work area conditions or the degree of employee (or contracted personnel) exposure or stress that may affect respirator effectiveness, the Respiratory Coordinator shall reevaluate the continued effectiveness of the respirator.
2. Supervisors shall ensure that employees (or contracted personnel) leave the respirator use area:
   a. To wash their faces and respirators to prevent eye or skin irritation;
   b. If they detect vapor or gas breakthrough, changes in breathing resistance, or leakage of the face piece; or
   c. To replace the respirator, filter, cartridge, or canister element.
3. If the employee (or contracted personnel) detects conditions described in #2 above, the supervisor will not allow the employee (or contracted personnel) back into the work area until the respirator is repaired or replaced.

D. Procedures for IDLH Atmospheres

1. Prior to entry into an IDLH atmosphere, the supervisor will ensure that at least one employee (or contracted personnel) remains outside the atmosphere.
2. Visual, voice, or signal line communications must be maintained between employees (or contracted personnel) inside the IDLH atmosphere and outside (radios are acceptable).
3. The employees (or contracted personnel) outside the IDLH atmosphere must be trained and equipped to provide effective emergency rescue. Rescue equipment will include:
   a. Positive pressure respirator or other supplied air respirator with auxiliary SCBA.
   b. Appropriate retrieval equipment or equivalent means of rescue where retrieval equipment would increase the overall risk of the entry.
   c. Multi-gas detector to continuously monitor atmospheric conditions for the safety of all employees (or contracted personnel).
   d. The proper Personal Protective Equipment (PPE) required for the task.
4. Employees (or contracted personnel) performing emergency rescue must notify the supervisor or other responsible representative, prior to rescue.
5. Upon notification, the employee (or contracted personnel) will provide the necessary assistance appropriate to the situation.

E. "Other" (negative pressure respirators)

1. Chemical Agent (see Directive #4903, "Use of Chemical Agents");
2. N95 or P100 Respirator;
3. Asbestos Respirator (see 12 NYCRR Part 56);
4. Lead Abatement (see Directive #4054, "Occupational Lead Exposure Program"); and
5. Organic Vapor (see Directive #2121, "Personal Protective Equipment").

F. Procedures for Interior Structural Firefighting: In addition to the requirements set forth in Section D above, the Fire/Safety Officer or designee will ensure that:

1. A minimum of four Firefighter I/SCBA certified firefighters are assembled prior to implementing operations inside the structure involved unless, using their professional judgment, immediate action must be taken to prevent the loss of life or serious injury;
2. Prior to employee entry into the structure, an employee is designated to maintain communications with those members who will be working inside the structure. Such communications may be voice, visual, or signal line (radios are acceptable);
3. Employees engaged in interior structural firefighting will use SCBA and must be Firefighter I certified. They will work inside the structure in teams of at least two. These employees will maintain close contact with each other through visual, voice, or touch (radios are not acceptable);
4. An adequate number of suitably equipped, trained, and certified personnel (at least two) shall be located outside the structure for rescue purposes should the need

arise. Rescue teams will consist of at least two firefighters in the nearest safe area and will not be assigned duties which cannot be abandoned without jeopardizing the safety of others at the scene.

Pump operators may not be utilized as part of the rescue team if the apparatus they are operating is utilized in the operations being conducted; and

5. A rescue team will be dispatched whenever a request for assistance is made from those inside or whenever the employee in charge of maintaining communications is unable to determine their status. Communications with those inside the fire scene will be frequent enough to assure their safety.

X. MAINTENANCE, CLEANING, INSPECTION, AND STORAGE

A. Respirators will be cleaned and disinfected as recommended by the manufacturer's instructions. Cleaning of respirators will be performed per the following schedule (Refer to 29 CFR 1910.134):

1. Respirators issued for the exclusive use of one employee (or contracted personnel) shall be cleaned and disinfected as often as necessary to be maintained in a sanitary condition. Shared respirators shall be cleaned and disinfected before being worn by different individuals;
2. Emergency use respirators (e.g., SCBA, Chemical Agent Mask) shall be cleaned and disinfected after each use; and
3. Respirators used in fit testing will be cleaned and disinfected after each use.

B. Respirators will be inspected to check for function, tightness of connections, and the condition of various parts including: the face piece, head straps, valves, and cartridges or filters. In addition, elastomeric parts will be checked for pliability and signs of deterioration. Inspections of respirators will be in accordance with the following schedule:

1. All respirators used routinely will be inspected before each use and during cleaning;
2. All emergency use respirators (e.g., SCBA, Chemical Agent Mask) will be inspected on a monthly basis and checked for proper function before and after each use; and
3. Inspection will be conducted in accordance with Form #4068C, "Respiratory Protection Program-Respiratory Inspection Record."

C. Inspections of SCBA will also include:

1. Ensuring that the air cylinder is fully charged;
2. Ensuring that the regulator and warning devices function properly;
3. Completing Form #4068C ; and
4. Ensuring the Personal Alert Safety System (PASS) device functions properly.

D. Inspection of Chemical Agent Mask

1. Inspected in accordance with Form #4068C; a copy of which shall be attached to the inside cover of the master logbook.

2. Results of inspection will be recorded in a protective mask master log with the date, title, name of employee (or contracted personnel) conducting the inspection, and the location where the mask is secured, with room for comments if needed.
3. Protective mask master logbooks will be stored in the arsenal or by respective Department supervisors who will enter the inspection data.
4. If protective masks are assigned to a post, the same entries will be made in the post log, with the inspection information forwarded to the arsenal in the protection mask master log.

E. Respirators Found in Disrepair: Will be taken out of service and not returned unless repaired by a properly trained individual.

F. Storage: All respirators will be stored to protect them from damage, contamination, dust, sunlight, extreme temperatures, excessive moisture, and damaging chemicals. They will be stored to prevent deformation of the face piece and exhalation valve.

G. The use of an N95 or P100 particulate respirator will be limited to an eight-hour shift. During the shift, if the respirator becomes wet, soiled, damaged, or breathing becomes difficult, leave the area and discard and replace the respirator. It should be disposed of following infection control and security procedures.

XI. AIR QUALITY, QUANTITY, AND FLOW (ATMOSPHERE-SUPPLYING RESPIRATORS)

A. The Fire/Safety Officer: Shall ensure that compressed air used to supply breathing air for SCBA bottles meet at least the requirements of Grade D air. This will be accomplished by:

1. Obtaining certificates of analysis from the supplier of purchased breathing air for each lot or batch of filled cylinders and maintaining a copy of the certificate on file; or
2. Testing air supplied from in-house compressors at least quarterly.

   NOTE: A tag containing the signature of the person authorized to change the in-line sorbent beds or filters and the date of change shall be maintained at the compressor.

B. When airline respirators are used, the employee (or contracted personnel) shall ensure that proper air quantity and flow is provided for each respirator. This can be accomplished by monitoring airline pressure at the air supply pressure gauge at the supply manifold. Pressure shall be maintained in accordance with the manufacturer's specifications.

XII. TRAINING

A. All employees (or contracted personnel) who are required to use respiratory protection will be instructed on why respirators are necessary and how improper fit, usage, or maintenance can compromise the protective effect of the respirator. The training will be provided prior to any assignment requiring the use of such equipment, annually thereafter, and whenever:

1. Changes in the workplace or type of respirator render previous training obsolete;
2. Inadequacies in an employee's (or contracted personnel's) knowledge or use of a respirator indicate that the employee (or contracted personnel) has not retained the required understanding or skill; or

3. Any situation arises in which retraining appears necessary.

B. The training, conducted by qualified personnel, will also include information on:
   1. Limitations and capabilities of respirators;
   2. Effective use of respirators in emergency situations, to include when a respirator malfunctions;
   3. How to inspect, put on and remove, use, and check the seal of the respirator;
   4. Maintenance and storage procedures;
   5. How to recognize medical signs and symptoms that may limit or prevent the effective use of the respirators; and
   6. The general requirements of the OSHA Respiratory Protection Standard (29 CFR 1910.134).

XIII. PROGRAM EVALUATION

A. The Respiratory Coordinator shall continually evaluate the Respiratory Protection Program to ensure that it is being properly implemented and continues to be effective.

B. Problems identified through consultations with employees (or contracted personnel) shall be corrected.

C. Factors to be assessed include:
   1. Respirator fit;
   2. Respirator selection;
   3. Proper use under the workplace conditions that employees (or contracted personnel) encounter; and
   4. Proper respirator maintenance.

XIV. RECORDKEEPING

A. Occupational Health
   1. The facility Personnel Office will enter the results of Form #1236 and the results of occupational physicals into the KOCH system.
   2. The Personnel Office will review the KOCH system to ensure that the list of cleared employees (or contracted personnel) is current. If staff requires an occupational physical, the Personnel Office will schedule them through Employee Health Services.
   3. All medical documentation concerning clearance for respirators must be kept confidential and maintained in a separate medical personnel file of each employee.

B. Training: A record of employee (or contracted personnel) names and dates and type of subsequent training will be recorded in the KHRT system by the Regional Training Office and the Training Academy.

C. Fit Testing: When fit testing is conducted, an RTF-SLMS form must also be completed for entry into the KHRT system by the Regional Training Office or the Training Academy. KHRT course numbers are as follows:
   - #41740 – SCBA
   - #21006A – Avon C-50
   - #12053 – N95

- #41742 – P100 (half face)
- #41743 – P100 (full face)

D. Data Collection: Incidents of contaminant exposure and results of contaminant exposure testing will be maintained at the facility by the DSA. A copy will be forwarded to the Department's Fire/Safety Coordinator.

E. Respirator Fit Test Card: Employees (or contracted personnel) will be issued a "Respirator Fit Test Card Applicable Documentation," Form #1237 (sample), once fit testing has been completed. This card shall be carried by the employee (or contracted personnel) at all times. The card verifies that the bearer has been properly fit tested. It will be completed by the employee (or contracted personnel) who conducts the fit test.

EXIBIT #29

No. 20-1158

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

IN RE: AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Petitioner

On Emergency Petition for a Writ of Mandamus

DEPARTMENT OF LABOR'S RESPONSE TO THE EMERGENCY PETITION FOR A WRIT OF MANDAMUS

KATE S. O'SCANNLAIN
Solicitor of Labor

TIMOTHY J. TAYLOR
Deputy Solicitor of Labor

EDMUND C. BAIRD
Associate Solicitor for
Occupational Safety and Health
U.S. Department of Labor
200 Constitution Ave., NW,
Room S-4004
Washington, DC 20210
(202) 693-5460

May 29, 2020

fairly traceable cause of any injury, nor a substantial likelihood that its imposition would remedy such injury or threatened injury. Petitioner fails to demonstrate that any employer has or would forgo compliance with any of the potential standards to which Petitioner alludes, simply because they are not set forth in an ETS. Nor could Petitioner do so, because the standards Petitioner seeks are largely already mandatory and enforceable either through existing OSHA requirements or the veritable gamut of non-OSHA public safety requirements enacted by federal, state, and local officials in response to the pandemic.

Second, OSHA's determination that an ETS is not "necessary" and therefore cannot and should not issue, 29 U.S.C. § 655(c)(1), is "committed to the agency's expertise in the first instance," *In re Int'l Union, United Mine Workers of Am.* (*UMWA*), 231 F.3d 51, 54 (D.C. Cir. 2000), and should not be disturbed. COVID-19 is a community-wide hazard that is not unique to the workplace.[9] Based on substantial evidence, OSHA determined that an ETS is not necessary both because there are existing OSHA and non-OSHA standards that address COVID-19 and because an ETS would actually be counterproductive. The risk of COVID-19 is

[9] For example, a recent CDC report studying meat and poultry facilities concluded that "many workers live in crowded, multigenerational settings and sometimes share transportation to and from work, contributing to increased risk for transmission of COVID-19 outside the facility itself." CDC, *Morbidity and Mortality Weekly Report: COVID-19 Among Workers in Meat and Poultry Processing Facilities – 19 States, April 2020*, tinyurl.com/yd2aehgo.

extreme step is unnecessary. *See Asbestos Info. Ass'n*, 727 F.2d at 426 (ETS unnecessary where redundant with current regulations). OSHA has trained its inspectors regarding these standards and their applicability to COVID-19. Sweatt Decl., Addendum Tab 1, ¶ 32. Where appropriate, OSHA has and will take enforcement action for violations.

2. OSHA's General Duty Clause Requires Employers To Take Precautions Against COVID-19

The OSH Act's general duty clause imposes additional mandatory obligations. The clause requires every employer to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." 29 U.S.C. § 654(a)(1). To establish a violation of the general duty clause, the Secretary must show that: (1) an activity or condition in the employer's workplace presented a hazard to an employee; (2) either the employer or the industry recognized the condition or activity as a hazard; (3) the hazard was likely to or actually did cause death or serious physical harm; and (4) a feasible means to eliminate or materially reduce the hazard existed. *BHC Nw. Psychiatric Hosp., LLC v. Sec'y of Labor*, 951 F.3d 558, 563 (D.C. Cir. 2020) (citation omitted). Tellingly,

---

standards were designed to protect against a variety of hazards and have been applied to infectious disease and are effective in doing so. That guarding against infectious disease broadly or COVID-19 specifically is not their sole aim is a red herring.

EXIBIT #30

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2020–0004]

RIN 1218–AD36

Occupational Exposure to COVID–19; Emergency Temporary Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is issuing an emergency temporary standard (ETS) to protect healthcare and healthcare support service workers from occupational exposure to COVID–19 in settings where people with COVID–19 are reasonably expected to be present. During the period of the emergency standard, covered healthcare employers must develop and implement a COVID–19 plan to identify and control COVID–19 hazards in the workplace. Covered employers must also implement other requirements to reduce transmission of COVID–19 in their workplaces, related to the following: Patient screening and management; Standard and Transmission-Based Precautions; personal protective equipment (PPE), including facemasks or respirators; controls for aerosol-generating procedures; physical distancing of at least six feet, when feasible; physical barriers; cleaning and disinfection; ventilation; health screening and medical management; training; anti-retaliation; recordkeeping; and reporting. The standard encourages vaccination by requiring employers to provide reasonable time and paid leave for employee vaccinations and any side effects. It also encourages use of respirators, where respirators are used in lieu of required facemasks, by including a mini respiratory protection program that applies to such use. Finally, the standard exempts from coverage certain workplaces where all employees are fully vaccinated and individuals with possible COVID–19 are prohibited from entry; and it exempts from some of the requirements of the standard fully vaccinated employees in well-defined areas where there is no reasonable expectation that individuals with COVID–19 will be present.

DATES:

Effective dates: The rule is effective June 21, 2021. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 21, 2021.

Compliance dates: Compliance dates for specific provisions are in 29 CFR 1910.502(s). Employers must comply with all requirements of this section, except for requirements in paragraphs (i), (k), and (n) by July 6, 2021. Employers must comply with the requirements in paragraphs (i), (k), and (n) by July 21, 2021.

Comments due: Written comments, including comments on any aspect of this ETS and whether this ETS should become a final rule, must be submitted by July 21, 2021 in Docket No. OSHA–2020–0004. Comments on the information collection determination described in Section VII.K of the preamble (OMB Review under the Paperwork Reduction Act of 1995) may be submitted by August 20, 2021 in Docket Number OSHA–2021–003.

ADDRESSES: In accordance with 28 U.S.C. 2112(a), the agency designates Edmund C. Baird, Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor, U.S. Department of Labor, to receive petitions for review of the ETS. Service can be accomplished by email to *zzSOL-Covid19-ETS@dol.gov.*

Written comments: You may submit comments and attachments, identified by Docket No. OSHA–2020–0004, electronically at *www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the online instructions for making electronic submissions.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2020–0004). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to Docket No. OSHA–2020–0004 at *www.regulations.gov.* All comments and submissions are listed in the *www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code. OSHA is identifying supporting information in this ETS by author name and publication year, when appropriate. This information can be used to search for a supporting document in the docket at *http://www.regulations.gov.* Contact the OSHA Docket Office at 202–693–2350 (TTY number: 877–889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Contact Frank Meilinger, Director, Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

For technical inquiries: Contact Andrew Levinson, Directorate of Standards and Guidance, U.S. Department of Labor; telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION: The preamble to the ETS on occupational exposure to COVID–19 follows this outline:

Table of Contents

I. Executive Summary

This ETS is based on the requirements of the Occupational Safety and Health Act (OSH Act or Act) and legal precedent arising under the Act. Under section 6(c)(1) of the OSH Act, 29 U.S.C. 655(c)(1), OSHA shall issue an ETS if the agency determines that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and an ETS is necessary to protect employees from such danger. These legal requirements are more fully discussed in *Pertinent Legal Authority* (Section III of this preamble).

For the first time in its 50-year history, OSHA faces a new hazard so grave that it has killed nearly 600,000