

Proposed Action: Addition of Part 850 to Title 12 NYCRR. Statutory authority: Labor Law, sections 27-d (8), 21(11) and 29 Subject: Workplace Safety Committees.

Purpose: To comply with Labor Law section 27-d (8) which requires that the department adopt regulations.

Public hearing(s) will be held at: 11:00 a.m., Feb. 9, 2022, location to be announced on Department of Labor's website.

Text of proposed rule: Anew Subchapter B, and a new Part 850 therein, is added to Title 12 of the Official Compilation of Codes, Rules, and Regulations of the state of New York to read as follows:

Section 850.1 Purpose

This part establishes rules and regulations for workplace safety committees, as required by Section 27-d of the Labor Law.

§ 850.2 Definitions

As used in this Part and for the purposes of Section 27-d of the Labor Law:

(a) "Employee" means any person suffered or permitted to work for, at, or by an employer, in the State, except for employees of the State, any political subdivision of the State, a public authority, or any other governmental agency or instrumentality.

(b) "Employer" means any person, entity, business, corporation, partnership, limited liability company, or association employing at least ten employees. The term shall not include the state, any political subdivision of the state, a public authority, or any other governmental agency or instrumentality.

(1) The number of employees employed by an employer shall be determined by counting the total number of employees employed within the State by the employer.

(2) Employees on paid or unpaid leave, including sick leave, leaves of absence, disciplinary suspension, or any other type of temporary absence, are to be counted as long as the employer has a reasonable expectation that the employee will later return to active employment. If there is no employment relationship (as when an employee is laid off or terminated, whether temporarily or permanently), such individual is not counted.

(3) Part-time, newly hired, temporary, and seasonal employees, like full-time employees, are considered to be employees. Employees jointly employed by more than one employer shall be counted by each employer, whether or not they are on the employer's payroll records, in determining employer coverage and employee eligibility to participate in the Workplace Safety Committee.

(c) "Geographically distinct worksites" means two or more worksites operated by the same employer that do not constitute a single worksite.

(d) "Non-Supervisory Employee" means any employee who does not perform supervisory responsibilities, which includes but is not limited to the authority to direct and/or control the work performance of other Employees. "Non-Supervisory Employee" excludes managerial and executive Employees.

(e) "Notice" shall mean a written, posted, or electronic method of

providing information to an individual that is reasonably calculated to provide actual notice but shall not require acknowledgement of receipt.

(f) "Temporary worksite" means a work location at which no Employee works for fewer than twenty working days.

(g) "Worksite" means a single, physical location where services, operations or other activities are performed, provided that:

(1) Several worksites within a single location or building may exist if separate employers conduct activities within the building. For example, an office building housing 50 different businesses may contain 50 worksites, and a construction site with employees of several different employers may contain several different worksites.

(2) A worksite may refer to either a single location or a group of contiguous locations in proximity to one another even though they are not directly connected to one another. For example, groups of structures which form a campus or industrial park or separate facilities across the street from one another owned by the same employer may be considered a single worksite.

(3) Separate buildings or facilities which are not physically connected or are not in proximity to one another may be considered a worksite if they are in reasonable geographic proximity, are used by the employer for the same purpose, and share the same staff or equipment. Where an employer has two separate locations in the same geographic area and the purpose of one location is to support the operations of the other location, and this support requires travel between the two locations, the two locations will be considered a worksite.

(4) Contiguous buildings or sites occupied by the same employer that have separate management, produce different products or provide different services, and have separate workforces do not constitute a single worksite. However, all operations of an Employer within the same building will be considered a single worksite. For example, an Employer that operates offices on numerous floors of a single building is operating a single worksite.

(5) Non-contiguous sites in the same geographic area that have separate management, produce different products or provide different services, and have separate workforces do not constitute a single worksite.

(6) The worksite of employment for employees whose primary duties require travel from point to point, who telecommute, are out stationed, or whose primary duties involve work outside any of the employer's regular employment sites (e.g., railroad employees, bus drivers, salespersons), shall be the worksite to which they are assigned as their employer's home base, from which their work is assigned, or to which they report.

(7) The term "Worksite" shall not include a Temporary worksite as defined in this section.

§ 850.3 Workplace Safety Committees

(a) Establishment:

(1) Workplace safety committees may be established for each worksite following a written request for recognition by at least two non-supervisory employees who work at the worksite. Multiple requests for committee recognition shall be combined and treated as a single request to form a

committee. For example, two separate written requests by individual non-supervisory employees who work at the worksite shall be considered a qualifying written request for recognition by at least two non-supervisory employees.

(2) Upon the receipt of a request for recognition, employers shall respond to such request with reasonable promptness. Requests for committee recognition received after a committee has been recognized by an employer shall be denied and referred to the committee. Requests for committee recognition where an employer already has a workplace safety committee that is otherwise consistent with the requirements of Section 27-d and this Part may be denied and referred to said committee.

(3) Within five days of recognition, employers shall provide notice to all employees at the worksite of the recognition.

(4) Employers shall not interfere with the selection of the non-supervisory employees of a workplace safety committee.

(5) Workplace safety committees representing geographically distinct worksites may also be formed by non-supervisory employees in accordance with the provisions set forth in this section, including by non-supervisory employees who regularly work in multiple or different geographically distinct worksites. For example, non-supervisory employees of a traveling show may form a committee to represent the geographically distinct worksites the show travels within the State.

(6) Workplace safety committees shall be authorized to perform the functions set out in Section 27-d.

(b) Composition:

(1) Workplace safety committees shall be comprised of not less than two non-supervisory employees and not less than one employer representative. The ratio of non-supervisory employees to employer representatives shall not be less than two non-supervisory employees to one employer representative at any given time.

(2) Non-supervisory employees at a worksite without a collective bargaining agreement in place shall be selected by and amongst the employer's non-supervisory employees as determined by the non-supervisory employees of the employer. Examples of methods to select non-supervisory employees include, but not limited to, self-selection, nomination by co-workers, and elections. At a worksite where there is a collective bargaining agreement in place, the collective bargaining representative shall select the employee representatives, who may be any non-supervisory employee or employee covered by the collective bargaining agreement.

(3) Workplace safety committees shall have a maximum of 12 members, inclusive of non-supervisory employees and employer representatives, or one-third of the total number of employees at a worksite, whichever is fewer, except that workplace safety committees at worksites that have fewer than 10 employees shall have 3 members.

(4) Workplace safety committees shall be co-chaired by a non-supervisory employee and an employer representative.

(5) No non-supervisory employee may be a member of two different workplace safety committees for the same employer.

(c) **Rules:**

- (1) *Workplace safety committees may take actions as a committee in a manner consistent with any rules or procedures adopted by the committee. If no rules or procedures are adopted by the committee, the committee may take action only by majority vote.*
- (2) *Workplace safety committees may establish rules or bylaws, provided that such operating procedures are consistent with this Part and Section 27-d of the Labor Law. Such rules and bylaws may include but are not limited to procedures for the selection of new members, terms of members, and the training of new members. Bylaws that exceed or conflict with the tasks authorized by Section 27-d (4) of the Labor Law shall be considered ultra vires.*
- (3) *Workplace safety committees may provide for an official training opportunity for committee members provided, however, that such training shall not, for any member, exceed four hours in any calendar year. Such official training shall be without loss of pay to committee members.*
- (4) *Meetings shall be scheduled in accordance with rules adopted by the workplace safety committee, otherwise by agreement of the co-chairs.*
- (5) *Meetings shall be scheduled at times that do not unreasonably conflict with the Employer's business operations.*
- (6) *Meetings may be conducted at least once per quarter for not longer than two work hours in total for all meetings per quarter. Time spent during work hours for any such meetings shall be considered hours worked. Nothing in this Part shall restrict a workplace safety committee's ability to conduct additional meetings beyond the meeting or meetings that consist of two work hours in total per quarter, but they must be conducted outside of work hours and do not constitute hours worked, except with permission of the Employer.*
- (7) *Workplace safety committees, through the co-chairs, shall be responsible for notifying the employer of changes to the membership of the committee.*
- (8) *Nothing in this Part shall be construed to restrict an employer's ability to prohibit the performance of committee duties during work hours, except during quarterly committee meetings. Employees' work on workplace safety committee matters, aside from quarterly meetings, may not interfere with the performance of their work responsibilities.*

§ 850.4 Employer Obligations.

- (a) *After the establishment of a workplace safety committee, employers shall:*
 - (1) *Respond, in writing, to each safety and health concern, hazard, complaint and other violations raised by the workplace safety committee or one of its members within a reasonable time period.*
 - (2) *Respond to a request for policies or reports that relate to the duties of the workplace safety committee as specified in Section 27-d (4) of the Labor Law and 850.3(a)(6) of this Part from a workplace safety committee or one of its members within a reasonable time period.*
 - (3) *Provide notice, where practicable and not prohibited by law, to the workplace safety committee and its members ahead of any visit at the worksite by a governmental agency enforcing safety and health standards.*

(4) Appoint an employer representative to the committee to act as co-chair. Such employer representative may be a non-supervisory employee, an officer, the employer, or other representative.

(5) Permit members of the workplace safety committee to attend a meeting for up to two hours per quarter and an official training as scheduled by the committee in compliance with this Part. Attendance of meetings or trainings held in compliance with this section shall be considered hours worked.

(b) No employer shall interfere with the performance of the duties of the workplace safety committee or its members authorized by Section 27-d (4) of the Labor Law.

(c) No employer shall be required to disclose information or documentation to the workplace safety committee or committee member where such disclosure is prohibited by law, contains the personal identifying information of an employee as defined by Section 203-d of the Labor Law, or is outside of the scope of the information or documentation set forth in Section 27-d(4) of the Labor Law.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Paglialonga, NYS Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY 12240, (518) 485-2191, email: regulations@labor.ny.gov