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## Notice of Violation and Order to Comply

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To: Mayor  
P.O. Box 237  
Copenhagen, New York 13626

**Inspection Site:** Copenhagen Volunteer Fire Department  
9950 State Route 12  
Copenhagen, New York 13626

**Inspection Number:** 1547731  
**Inspection Date(s):** 08/16/2021-11/09/2021  
**Issuance Date:** 12/24/2021  
**CSHO ID:** N9924

*The violation(s) described in this Notice of Violation and Order to Comply is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

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This Notice of Violation and Order to Comply (this Notice) describes violations of the Public Employee Safety and Health Act of 1980. You must abate the violations cited in this Notice by the dates listed below. An employer who wishes to file an appeal of the violation(s) cited, including but not limited to appeals which raise issues concerning the application of the cited standard(s) to the employer or to the violation(s) cited, as well as issues concerning the appropriateness of the abatement period(s), must do so within 60 days of the issuance date of this Notice by filing a petition with the Industrial Board of Appeals. Appeals of the violation(s) cited, including but not limited to appeals raising the issues listed above, will be considered time barred if not filed within the 60-day period. The details of such appeal process are set forth at 12 NYCRR Part 65 et seq and Section 101 of the Labor Law. Additional information may also be obtained from the Industrial Board of Appeals at their website: [www.labor.state.ny.us/iba](http://www.labor.state.ny.us/iba).

**Posting** - The law requires that a copy of this Notice be posted immediately in a prominent place at or near the location of the violation(s) cited below. This Notice must remain posted until the violation(s) cited below have been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer.

**Penalty Assessment** - An employer that fails to correct a violation by its abatement date is subject to a PER DAY penalty assessment. We will assess a penalty of up to \$50 per day for each non-serious violation, and up to \$200 per day for each serious violation, until the violations are corrected. The penalty assessed for each violation will appear in the Failure to Abate notice.

**Informal Conference** - If an informal conference is requested, it must be made to the nearest PESH district office by telephone or letter, within 20 working days from the date of issuance given on this Notice.

Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far.



**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the PESH district office at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (P907) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Notice to Employees** - An employee (or an authorized employee representative) may object to the abatement date set for a violation if the employee believes the date to be unreasonable. The objection must be filed at the nearest PESH district office within fifteen (15) working days (excluding weekends and State holidays) from the posting of this Notice.





**Notice of Violation and Order to Comply**

**Establishment:** Copenhagen Volunteer Fire Department  
**Inspection Site:** 9950 State Route 12 Copenhagen, New York 13626

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1910.156(c)(1): The employer did not provide training and education commensurate with those duties and functions that fire brigade members were expected to perform:

(a) Copenhagen Volunteer Fire Department - There were two officers, one officer/interior firefighter, one interior firefighter and three exterior firefighters who responded to a structure fire on July 30, 2021 that did not receive initial fire brigade training and education commensurate with the duties the members were expected to perform.

Date by Which Violation Must Be Abated: February 14, 2022

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.156(c)(2): The employer did not assure that training and education is conducted frequently enough to assure that each member of the fire brigade is able to perform the member's assigned duties and functions satisfactorily and in a safe manner so as not to endanger fire brigade members or other employees. All fire brigade members were not provided with training at least annually. In addition, fire brigade members who are expected to perform interior structural firefighting were not provided with an education session or training at least quarterly:

a) Copenhagen Volunteer Fire Department - There was one exterior firefighter and one interior firefighter who responded to a structure fire on July 30, 2021 that did not receive any training from August 2020 through July 2021.

b) Copenhagen Volunteer Fire Department - There were three interior firefighters who responded to a structure fire on July 30, 2021 that did not receive training at least quarterly from August 2020 through July 2021.


Date by Which Violation Must Be Abated: February 14, 2022

Citation 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.156(e)(1)(i): The employer did not provide at no cost to the employee and assure the use of protective clothing which complies with the requirements of this paragraph:

a) Copenhagen Volunteer Fire Department - The employer did not assure the use of the required protective clothing (e.g., helmet, turnout coat, turnout pants (bunker pants), firefighters boots, firefighters gloves, Nomex protective hood, eye protection) when two members were performing interior structural firefighting on July 30, 2021.

Date by Which Violation Must Be Abated: February 14, 2022

  
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Joseph Fuller  
Supervising Safety and Health Inspector





# Employer Rights and Responsibilities

## Under the New York State Public Employee Safety and Health Act

*New York State's Public Employee Occupational Safety and Health Act of 1980 covers all public employees at the State and local levels. The Act offers the same OSHA safety and health standards that apply to workers in the private sector to employees in the public sector. This fact sheet gives you a broad view of the features of the law.*

### Employer Responsibilities

Under the Act, employers include:

- The State
- Any political subdivision of the State
- Public authorities created by the State

An employer must:

- Provide a workplace free from known hazards
- Protect the lives, safety and health of their employees and
- Comply with all the standards listed under the United State Occupational Safety and Health Act

### Standards

The Law requires the Commissioner of Labor to adopt all standards listed under the United States Occupational Safety and Health Act.

### Inspections

The Commissioner of Labor has sole authority to enforce the safety and health standards required under the Act. An inspection can result from a complaint, an accident, or part of a regularly scheduled program. We give the highest priority to imminent danger complaint inspections. Representatives of the employer and the employees are invited to go with the inspector during an inspection. This is called a "walkaround."

### Enforcement

If we issue a Notice of Violation and Order to Comply to an employer, it will:

- Describe the violation
- Refer to the standard in question
- List the type of violations (serious, non-serious, willful or repeat) and
- Set a time for compliance

When the Commissioner issues an order to comply, the employer must post it or a copy of it:

- In a conspicuous place
- At or near each place of violation cited
- Where it is clearly visible to affected employees

The Commissioner will give copies of Orders to Comply to all organizations that represent employees.

### Penalty Assessment

We impose a PER DAY penalty assessment on an employer that fails to correct a violation by its abatement date. Until the violations are corrected, we will assess a penalty of up to:

- \$50 per day for each non-serious violation and
- \$200 per day for each serious violation

We list the penalty assessed for each violation in the Failure to Abate Notice.

### Informal Conference

If issues arise from an inspection and the orders to comply, we make arrangements for an informal conference. This is a meeting of the Supervising Inspector of the Public Employee Safety and Health (PESH) Bureau to discuss issues with an employer, employee or an



authorized representative of the employees. To ask for an informal conference, contact the nearest PESH district office by phone or letter, within 20 working days from the issue date on the orders.

### **Judicial Enforcement**

If the employer does not comply with the order by the deadline, we can take legal action under Article 78 of the Civil Practice Law and Rules.

### **Appeals**

If an employer does not agree with an order, they or their representative may appeal to the Industrial Board of Appeals within 60 days. Address the appeal to:

Industrial Board of Appeals  
Empire State Plaza  
Agency Building 2, 20<sup>th</sup> Floor  
Albany, NY 12223

If an employer or employee is dissatisfied with a decision of the Industrial Board of Appeals, they may begin a proceeding according to Article 78 of the Civil Practice Law and Rules. They must do so within 60 days after the Board's decision.

### **Alternative Compliance Agreement**

If the Public Employer proposes a different way to comply, PESH may enter into an alternative compliance agreement. PESH will ask the Division of Safety and Health's Engineering Services Unit (ESU) to help review the employer's proposal. The employer will submit their alternative to ESU, which will review it and schedule a meeting to discuss and refine the proposal.

The Employer, affected Unions and PESH will attend that meeting. They will write up the results into an alternative compliance agreement agreed to by all parties. PESH will conduct a follow-up inspection to ensure the employer has complied with the alternative compliance agreement.

### **Injunctions**

When inspectors see a situation that may present an imminent danger of serious physical harm or death to an employee, they must notify the employees involved and the employer, and ask for immediate corrective action.

- If the employer agrees with the inspector and acts to remove the imminent danger, no injunction is needed.
- If the employer does not agree and refuses to act on the danger, the inspector will advise both parties that the Commissioner of Labor will take legal action to improve the situation. In these cases the Commissioner must seek an injunction within 48 hours. If the Commissioner fails to take action, any person affected by the situation may do so.

### **Consultation**

The PESH staff includes experienced safety and health consultants. They are available, upon request, to any employer for guidance on safety and health matters. The consultant will review the employer's site and operations to see if they comply with current safety and health standards. Their report will offer recommendations to the employer. Such findings may become a public document and be released upon request.

### **Petition to Modify an Abatement Date**

At times the employers cannot comply with a violation because certain needs are not available. They may apply for a Petition to Modify an Abatement Date, if they lack:

- Professional or technical personnel or
- Materials and equipment needed to come into compliance

The employers must prove they are taking all available steps to protect the employees exposed to the hazard. They must institute a program to reach compliance as quickly as possible.





## **Variations**

Employers may ask for permanent variations from a standard listed under the Act. They must give employees:

- Notice of each application and
- The opportunity to take part in a hearing

The Commissioner may issue a permanent variance after due process, including a hearing, if evidence shows that:

- the conditions, practices, means, methods, operations or processes
- used or proposed by the employer are as safe and healthful as if the employer complied with the standard.

We can modify or revoke a permanent variance at the request of the employer, employee or employee representative. The Commissioner may apply to modify or revoke a permanent variance six months after the issue date.

Employers may apply for a temporary variance from a new standard if they cannot comply by the effective date because materials, equipment or technical personnel are not available.

## **Recordkeeping**

Part 801 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York specifies the recordkeeping requirements established by the Commissioner of Labor under Sec. 27a of the Labor Law. See our website for a copy of the rules.

## **Discrimination**

No employer may:

- Discharge or
- Otherwise discipline or
- In any manner discriminate against any person

because the employee has:

- Filed a complaint or
- Started any proceeding under or related to this program

Employees who think they are being discriminated against may file a complaint with the Commissioner of Labor. The Commissioner must investigate the allegation and decide on its merit.

## **Funding Assistance Available**

Under the terms of the Act, the Abatement Board can help ease the cost of capital projects to abate occupational safety and health hazards cited by PESH. Public Employers may apply for 75 percent reimbursement under this program.

However, the public employer must correct any cited violation by the abatement date. They may correct the violation by a variance or by other means. State Agencies and public authorities created by the State do not qualify for this funding.

### **For more information about funding, contact:**

Secretary to the Board  
NYS Department of Labor  
Bldg. 12, Rm. 436  
State Office Campus  
Albany NY 12249  
(518) 457-7629

### **For more information, contact a district office.**

#### **Albany District**

State Office Campus  
Bldg. 12, Rm. 158  
Albany, NY 12240  
Tel: (518) 457-5508

#### **Binghamton District**

44 Hawley Street, Rm. 901  
Binghamton, NY 13901  
Tel: (607) 721-8211



**Buffalo District**

65 Court Street  
Buffalo, NY 14202  
Tel: (716) 847-7133

**Garden City District**

400 Oak Street  
Garden City, NY 11550  
Tel: (516) 228-3970

**New York City District**

75 Varick St., 7th Floor  
New York, NY 10013  
Tel: (212) 775-3554

**Rochester District**

109 S. Union Street, Rm. 402  
Rochester, NY 14607  
Tel: (585) 258-8806

**Syracuse District**

450 South Salina Street  
Syracuse, NY 13202  
Tel: (315) 479-3212

**Utica District**

207 Genesee Street  
Utica, NY 13501  
Tel: (315) 793-2258

**White Plains District**

120 Bloomingdale Road  
White Plains, NY 10605  
Tel: (914) 997-9514