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Short Title: Safety Programs and Committees.

(Public)

Sponsors:

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A BILL TO BE ENTITLED
AN ACT TO REQUIRE CERTAIN EMPLOYERS TO ESTABLISH SAFETY AND
HEALTH PROGRAMS AND SAFETY AND HEALTH COMMITTEES IN THE
WORKPLACE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 95 of the General Statutes is amended by adding a new
Article to read:

"ARTICLE 22.

"SAFETY AND HEALTH PROGRAMS AND COMMITTEES.

"§ 95-250. Definitions.

The following definitions shall apply in this Article:

- (1) 'Experience rate modifier' means the numerical modification applied by the Rate Bureau to an experience rating for use in determining workers' compensation premiums.
- (2) 'Worksite' means a single physical location where business is conducted or where operations are performed by employees of an employer.

The definitions of Article 16 of this Chapter shall also apply to this Article, except that 'employee' for the purposes of G.S. 95-252(a), 95-252(c)(1)b., 95-255, and 95-256 means an employee employed for some portion of a working day in each of 20 or more calendar weeks in the current or preceding calendar year.

1 **"§ 95-251. Safety and health programs.**

2 (a) Establishment of safety and health programs.

3 (1) Except as provided in subdivision (2) of this subsection, each
4 employer with an experience rate modifier of 1.5 or greater shall, in
5 accordance with this section, establish and carry out a safety and
6 health program to reduce or eliminate hazards and to prevent injuries
7 and illnesses to employees.

8 (2) Employers with an experience rate modifier of 1.5 or greater which
9 provide temporary help services shall, in accordance with this section,
10 establish and implement a safety and health program to reduce or
11 eliminate hazards and to prevent injuries and illnesses to its full-time
12 employees permanently located at the employer's worksite. Employers
13 which provide temporary help services shall not be required to
14 establish and implement a safety and health program under this section
15 for its employees assigned to a client's worksite. This subdivision
16 shall not apply to employee leasing companies.

17 (3) The Commissioner may modify the application of the requirements of
18 this section to classes of employers where the Commissioner
19 determines that, in light of the nature of the risks faced by the
20 employees of these employers, such a modification would not reduce
21 the employees' safety and health protection.

22 (b) Safety and health program requirements. A safety and health program
23 established and implemented under this section shall be a written program that shall
24 include at least all of the following:

25 (1) Methods and procedures for identifying, evaluating, and documenting
26 safety and health hazards.

27 (2) Methods and procedures for correcting the safety and health hazards
28 identified under subdivision (1) of this subsection.

29 (3) Methods and procedures for investigating work-related fatalities,
30 injuries, and illnesses.

31 (4) Methods and procedures for providing occupational safety and health
32 services, including emergency response and first aid procedures.

33 (5) Methods and procedures for employee participation in the
34 implementation of the safety and health program.

35 (6) Methods and procedures for responding to the recommendations of the
36 safety and health committee, where applicable.

37 (7) Methods and procedures for providing safety and health training and
38 education to employees and to members of any safety and health
39 committee established under G.S. 95-252.

40 (8) The designation of a representative of the employer who has the
41 qualifications and responsibility to identify safety and health hazards
42 and the authority to initiate corrective action where appropriate.

43 (9) In the case of a worksite where employees of two or more employers
44 work, procedures for each employer to protect employees at the

1 worksite from hazards under the employer's control, including
2 procedures to provide information on safety and health hazards to
3 other employers and employees at the worksite.

4 (10) Any other provisions as the Commissioner requires to effectuate the
5 purposes of this section.

6 (c) No loss of pay. The time during which employees are participating in
7 training and education activities under this section shall be considered as hours worked
8 for purposes of wages, benefits, and other terms and conditions of employment. The
9 training and education shall be provided by an employer at no cost to the employees of
10 the employer.

11 **"§ 95-252. Safety and health committees required.**

12 (a) Establishment of safety and health committees. Except as provided in
13 subsection (b) of this section, each employer with 11 or more employees and an
14 experience rate modifier of 1.5 or greater shall provide for the establishment of safety
15 and health committees and the selection of employee safety and health representatives
16 in accordance with this section.

17 (b) Temporary help services. Temporary employees of employers which provide
18 temporary help services shall not be counted as part of the 11 or more employees
19 needed to establish a safety and health committee under this section, and employers
20 which provide temporary help services shall not be required to establish a safety and
21 health committee under this section for its employees assigned to a client's worksite.
22 This subsection shall not apply to employee leasing companies.

23 (c) Safety and health committee requirements.

24 (1) In general. Each employer covered by this section shall establish a
25 safety and health committee at each worksite of the employer, except
26 as provided as follows:

27 a. An employer covered by this section whose employees do not
28 primarily report to or work at a fixed location is required to
29 have only one safety and health committee to represent all
30 employees.

31 b. A safety and health committee is not required at a covered
32 employer's worksite with less than 11 employees.

33 c. The Commissioner may, by rule, modify the application of this
34 subdivision to worksites where employees of more than one
35 employer are employed.

36 (2) Membership. Each safety and health committee shall consist of:

37 a. The employee safety and health representatives selected or
38 appointed under subsection (d) of this section.

39 b. As determined appropriate by the employer, employer
40 representatives, the number of which may not exceed the
41 number of employee representatives.

42 (3) Chairpersons. Each safety and health committee shall be cochaired by:

43 a. A representative selected by the employer.

- 1 b. A representative selected by the employee members of the
2 committee.
- 3 (4) Rights. Each safety and health committee shall, within reasonable
4 limits and in a reasonable manner, exercise the following rights:
- 5 a. Review any safety and health program established by the
6 employer under G.S. 95-251.
- 7 b. Review incidents involving work-related fatalities, injuries and
8 illnesses, and complaints by employees regarding safety or
9 health hazards.
- 10 c. Review, upon the request of the committee or upon the request
11 of the employer representatives or employee representatives of
12 the committee, the employer's work injury and illness records,
13 other than personally identifiable medical information, and
14 other reports or documents relating to occupational safety and
15 health.
- 16 d. Conduct inspections of the worksite at least once every three
17 months and in response to complaints by employees or
18 committee members regarding safety or health hazards.
- 19 e. Conduct interviews with employees in conjunction with
20 inspections of the worksite.
- 21 f. Conduct meetings, at least once every three months, and
22 maintain written minutes of the meetings.
- 23 g. Observe the measurement of employee exposure to toxic
24 materials and harmful physical agents.
- 25 h. Establish procedures for exercising the rights of the committee.
- 26 i. Make recommendations on behalf of the committee, and in
27 making recommendations, permit any members of the
28 committee to submit separate views to the employer for
29 improvements in the employer's safety and health program and
30 for the correction of hazards to employee safety or health,
31 except that recommendations shall be advisory only and the
32 employer shall retain full authority to manage the worksite.
- 33 j. Accompany, upon request, the Commissioner or the
34 Commissioner's representative during any physical inspection
35 of the worksite.
- 36 (5) Time for committee activities. The employer shall permit members of
37 the committee established under this section to take the time from
38 work reasonably necessary to exercise the rights of the committee
39 without suffering any loss of pay or benefits for time spent on duties of
40 the committee.
- 41 (d) Employee safety and health representatives.
- 42 (1) In general. Safety and health committees established under this
43 section shall include:

- 1 a. One employee safety and health representative where the
2 average number of nonmanagerial employees of the employer
3 at the worksite during the preceding year was more than 10, but
4 less than 50.
- 5 b. Two employee safety and health representatives where the
6 average number of nonmanagerial employees of the employer
7 at the worksite during the preceding year was 50 or more, but
8 less than 100.
- 9 c. An additional employee safety and health representative for
10 each additional 100 such employees at the worksite, up to a
11 maximum of six employee safety and health representatives.
- 12 d. Where an employer's employees do not primarily report to or
13 work at a fixed location or at worksites where employees of
14 more than one employer are employed, a number of employee
15 safety and health representatives as determined by the
16 Commissioner by rule.

- 17 (2) Selection. Employee safety and health representatives shall be
18 selected by and from among the employer's nonmanagerial employees
19 in accordance with rules adopted by the Commissioner. The rules
20 adopted by the Commissioner may provide for different methods of
21 selection of employee safety and health representatives at worksites
22 with no bargaining representative, worksites with one bargaining
23 representative, and worksites with more than one bargaining
24 representative.

25 **"§ 95-253. Additional rights.**

26 The rights and remedies provided to employees and employee safety and health
27 representatives under this Article are in addition to, and not in lieu of, any other rights
28 and remedies provided by contract or by other applicable law and are not intended to
29 alter or affect those other rights and remedies.

30 **"§ 95-254. Rules.**

31 (a) Safety and health programs. Not later than one year after the effective date of
32 this Article, the Commissioner shall adopt final rules concerning the establishment and
33 implementation of employer safety and health programs under G.S. 95-251. Rules
34 adopted shall include provisions for the training and education of employees and safety
35 and health committee members. These rules shall include at least all of the following:

- 36 (1) Provision for the training and education of employees, including safety
37 and health committee members, in a manner that is readily
38 understandable by the employees, concerning safety and health
39 hazards, control measures, the employer's safety and health program,
40 employee rights, and applicable laws and regulations.
- 41 (2) Provision for the training and education of the safety and health
42 committee concerning methods and procedures for hazard recognition
43 and control, the conduct of worksite safety and health inspections, the
44 rights of the safety and health committee, and other information

1 necessary to enable the members to carry out the activities of the
2 committee under G.S. 95-252.

3 (3) Requirement that training and education be provided to new
4 employees at the time of employment and to safety and health
5 committee members at the time of selection.

6 (4) Requirement that refresher training be provided on at least an annual
7 basis and that additional training be provided to employees and to
8 safety and health committee members when there are changes in
9 conditions or operations that may expose employees to new or
10 different safety or health hazards or when there are changes in safety
11 and health rules or standards under Article 16 of this Chapter that
12 apply to the employer.

13 (b) Safety and health committees. Not later than one year after the effective date
14 of this Article, the Commissioner shall adopt final rules for the establishment and
15 operation of safety and health committees under G.S. 95-252. The rules shall include
16 provisions concerning at least the following:

17 (1) The establishment of such committees by an employer whose
18 employees do not primarily report to or work at a fixed location.

19 (2) The establishment of committees at worksites where employees of
20 more than one employer are employed.

21 (3) The employer's obligation to enable the committee to function
22 properly and effectively, including the provision of facilities and
23 materials necessary for the committee to conduct its activities, and the
24 maintenance of records and minutes developed by the committee.

25 (4) The provision for different methods of selection of employee safety
26 and health representatives at worksites with no bargaining
27 representative, worksites with one bargaining representative, and
28 worksites with more than one bargaining representative.

29 **"§ 95-255. Reports.**

30 (a) Upon the final adoption of all rules required to be adopted by the
31 Commissioner under this Article, the Commissioner shall determine, based on
32 information provided by the North Carolina Rate Bureau, the employers with an
33 experience rate modifier of 1.5 or greater and shall notify these employers of the
34 applicability of G.S. 95-251 and the potential applicability of G.S. 95-252.

35 (b) Within 60 days of notification by the Commissioner, the employer shall
36 certify on forms provided by the Commissioner that he meets the requirements of G.S.
37 95-251 and, if applicable, the requirements of G.S. 95-252.

38 (c) The Commissioner shall notify an employer when his experience rate
39 modifier falls below 1.5. An employer subject to the provisions of G.S. 95-252 shall
40 notify the Commissioner if he no longer employs 11 or more employees and has
41 discontinued or will discontinue the safety and health committee.

42 **"§ 95-256. Penalties.**

43 (a) The Commissioner may levy a civil penalty, not to exceed the amounts listed
44 as follows, for a violation of this Article:

1	<u>Employers with 10 or less employees</u>	<u>\$ 2,000</u>
2	<u>Employers with 11-50 employees</u>	<u>\$ 5,000</u>
3	<u>Employers with 51-100 employees</u>	<u>\$10,000</u>
4	<u>Employers with more than 100 employees</u>	<u>\$25,000.</u>

5 (b) The Commissioner, in determining the amount of the penalty, shall consider
6 the nature of the violation, whether it is a first or subsequent violation, and the steps
7 taken by the employer to remedy the violation upon discovery of the violation.

8 (c) An employer may appeal a penalty levied by the Commissioner pursuant to
9 this section to the Safety and Health Review Board subject to the procedures and
10 requirements applicable to contested penalties under Article 16 of this Chapter. The
11 determination of the Board shall be final unless further appeal is made to the courts
12 under the provisions of Chapter 150B of the General Statutes.

13 (d) All civil penalties and interest recovered by the Commissioner, together with
14 any costs, shall be paid into the General Fund of the State."

15 Sec. 2. This act is effective upon ratification, provided that all provisions
16 requiring employer compliance apply only upon the effective date of the rules adopted
17 by the Commissioner of Labor pursuant to this act.