**12 DEPARTMENT OF LABOR**

**170 BUREAU OF LABOR STANDARDS**

**Chapter 8: RULES REGARDING WORKPLACE HEALTH AND SAFETY PROGRAMS FOR EMPLOYERS WITH WORKERS' COMPENSATION MODIFICATION RATES OF TWO OR MORE**

SUMMARY: This chapter establishes standards for occupational health and safety programs required of employers with a workers' compensation insurance modification rate of two or more, pursuant to Title 39 MRSA Section 21-A, Subsection 4 as enacted by 1991 Public Law Chapter 615, Section A-22. Effective January 1, 1993, the authority for these rules will be transferred to Title 39-A Section 401, Subsection 5, as provided in 1991 Public Law Chapter 885.

A. DEFINITIONS

1. Bureau: "Bureau" means the Bureau of Labor Standards, Maine Department of Labor.

2. Commissioner's designee: "Commissioner's designee" means the Director of the Bureau of Labor Standards.

3. Director: "Director" means the Director of the Bureau of Labor Standards or the Director's designee.

4. mod rate: "Mod rate" means a workers' compensation insurance experience modification rate for an employer's establishments or operations in Maine.

B. NOTIFICATION OF EMPLOYERS

1. The Superintendent of Insurance shall communicate to the Director the names, Maine addresses, insurance carriers, policy term, and the mod rate of those employers that receive, in any policy year, an experience modification rating of 2 or more. Such communication must take place at the earliest possible time prior to the new mod rate taking effect. The mod rate reported must be the rate computed for those establishments or operations active in Maine.

2. The Director shall notify any such employer in writing of the requirement to undertake a workplace health and safety program, shall provide a statistical evaluation of the employer's workplace health and safety experience and shall enclose a set of workplace health and safety options for the employers information and consideration. Such options may include on-site consultation, education and training activities and technical assistance. A copy of the notice will be sent to the insurance carrier.

3. The employer shall submit a workplace health and safety plan to the Bureau within 90 calendar days of notification.

C. ELEMENTS OF AN EMPLOYER'S HEALTH AND SAFETY PLAN

1. The employer shall develop a written occupational health and safety plan which identifies the specific actions to be taken, the officials responsible for implementation and the dates by which the actions will be completed. If an appropriate plan already exists, a copy may be submitted. The plan must address the following five elements.

(a) Management commitment and employee involvement

(b) Worksite analysis and accident investigation

(c) Hazard prevention and control

(d) Safety and health training

(e) Medical management of injured or ill workers

2. The employer must describe what steps have and/or will be taken to improve workplace safety and health and to abate the documented hazards. If corrective action has recently been taken, those actions should be described. If implementation of a plan extends beyond the current policy year, each element should be described and the projected time frames for implementation specified.

3. The employer may describe any extenuating or unique circumstances that lead to the mod rating and how these problems have been addressed.

4. If the employer is unable to create a comprehensive program within the submittal deadline, the employer shall submit a preliminary plan which outlines the strategy and time tables within the current policy year. A final plan must be submitted prior to the end of the policy year.

5. The plan should involve employees to the greatest extent feasible to identify and correct possible hazards.

6. All individual employer submissions to the Bureau will be considered confidential under Title 26 MRSA Sections 3, 43, and 48.

7. If an employer has a mod rate of two or more in consecutive policy years, each succeeding plan must include a description of the results from previous plans and how the current plan has been refined using that experience. Repeated plan submissions should result in a more targeted and fully developed plans.

D. BUREAU'S REVIEW AND COMMENT

1. The Bureau will review each submission for relevance to the hazards identified, taking into account the experience and ability of the employer to identify and provide corrective action.

2. The Bureau will review and the Director will comment on all first submissions within 30 working days of receipt, unless further information is needed. The insurance carrier will receive copies of all review results.

3. The Bureau may wish to seek clarification of an employer's submission at any time during the review process. The Bureau may make on-site visits to evaluate the plan. If the Bureau does not receive clarification or is unable to have access to the site, the Director may choose to deem the submission incomplete.

4. The Director shall provide comments on the plan analyzing its strengths and weaknesses. If all, or part, of the plan is ruled to be incomplete or inappropriate, the problem areas will be identified and suggestions or options to address the problems will be included.

5. Employers who experience a mod rate of two or more and request Bureau consultation services shall be given a priority for those services.

6. Comments by the Bureau are advisory only and do not in any way release an employer from their legal obligation to provide safe and healthy working conditions.

E. EMPLOYER'S COMPLETION OF THE PROGRAM

1. The employer shall submit a final status report within 30 calendar days of the end of the term of the policy. If the employer is obligated to create another plan for the next policy term, the status report may be a part of the new plan.

F. BUREAU'S NOTIFICATION TO THE SUPERINTENDENT

1. The Director shall notify the Superintendent of Insurance of any employer that fails to submit a program as required above, submits one that is incomplete or inappropriate, or fails to complete the elements of the program. Copies of such notice must be sent to the employer and the employer's insurance carrier.

2. The Superintendent of Insurance shall assess a surcharge pursuant to the statute on that employer's workers' compensation insurance premium or the imputed premium of self-insurers, which must be paid to the Treasurer of the State who shall credit ½ of that amount to the Safety Education and Training Fund, as established by Title 26, Section 61, and ½ to the Occupational Safety Loan Fund, as established by Title 26, Section 62. Employers who fail to complete a required workplace health and safety program and who are assessed a surcharge prior to January 1, 1994, must be assessed a surcharge of 5%. Employers who fail to complete a required workplace health and safety program and who are assessed a surcharge after January 1, 1994, must be assessed a surcharge of 10%.\*

\*This section states the statutory requirements of the Superintendent of Insurance as expressed in 1991 Public Law Chapters 615 and 885. Chapter 885 has a general effective date of January 1, 1993 for this part. This information is included only for the information and convenience of readers, especially the regulated community. The Department of Labor has no regulatory authority over this part. This section marks the only change in the program as established by Chapter 615 and then transferred by Chapter 885 into a new Title of the Maine Revised Statutes Annotated.

STATUTORY AUTHORITY: 39 MRSA Section 21-A, Subsection 4 as established in 1992 Public Law Chapter 615. Authority is transferred to 39-A MRSA Section 401 Subsection 5 effective January 1, 1993, pursuant to 1992 Public Law Chapter 885.

EFFECTIVE DATE:

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