

How to Use the Public Employees Occupational Safety & Health (PEOSH) Act

GUIDELINES FOR LOCAL LEADERS

PEOSH is most effective when used as part of a local plan for health and safety that includes member education, a health and safety committee, active rank and file involvement, and contract enforcement.

Be aware there is another type of OSHA inspection where the employer requests an OSHA on-site consultation visit. The consultation is confidential and the findings are not reported to the OSHA inspection staff. No citations or penalties are issued and the only obligation for the employer is to correct serious job safety and health hazards – and carry them out in a timely manner. The OSHA reports from these visits are not public information. However, the locals’ health and safety (H&S) committee can and do obtain these reports from the school district and can ensure that the serious hazards are corrected as PEOSH does not always follow up. The H&S committee can also ensure the non-serious hazards identified are addressed.
<http://www.osha.gov/dcsp/smallbusiness/consult.html>

PART I: PEOSH, an important health and safety tool

Association members facing hazardous job conditions have many tools available to them when deciding what kind of action to take to prevent or eliminate risks. The NJ Public Employee Occupational Safety and Health (PEOSH) Act gives public school employees the right to file complaints about hazardous job conditions. Complaints may result in on-site inspections. If a PEOSH inspector finds that a school district is not in compliance with standards, the district can be issued citations and fines, and given abatement dates by which to comply.

A PEOSH complaint should only be filed when the local association has judged that it is likely to produce positive results. Indeed, filing a PEOSH complaint should be viewed as one strategy among many for eliminating and preventing hazardous working conditions. This fact sheet can help you decide when you should – and when you shouldn’t – make a formal complaint to PEOSH.

Before you file a complaint with PEOSH

Whether you are facing hazards that pose “imminent danger” and need immediate action or those that have persisted for years,

consider the following steps before filing a complaint with PEOSH.

- **Use NJEA resources**

Local association officers and UniServ representatives are experienced in negotiating with employers over a range of issues, including unsafe working conditions. They should also be able to judge whether to resolve hazardous conditions by working cooperatively with the employer, by complaining to PEOSH, or by using other tactics. In addition, the legal power of the association should help protect members from retaliation for taking action.

- **Bring hazardous conditions to the district’s attention**

It is your employer’s legal responsibility to provide a safe and healthful workplace. Members should work with their local association and/or safety committee to notify the district about hazards – and allow an appropriate response time. Despite PEOSH’s anti-retaliation provisions, some employers still retaliate against employees who raise health and safety concerns. Employees in unions have multiple protections against retaliation and therefore are least vulnerable when raising concerns directly with their employers.

HEALTH & SAFETY RESOURCES

Your NJEA UniServ Office

Region 1 Vineland 856 696 2670	Cape May/ Cumberland
Region 2 Woodbury 856 628 8650	Gloucester/Salem
Region 3 Voorhees 856 782 1225	Camden
Region 5 Moorestown 856 234 2485	Burlington
Region 6 Galloway Twp. 609 652 9200	Atlantic
Region 7 Toms River 732 349 0280	Ocean
Region 8 Lawrenceville 609 896 3422	Mercer
Region 9 West Long Branch 732 403 8000	Monmouth
Region 11/12 Edison 732 287 4700	Middlesex
Region 13 Flemington 908 782 2168	Hunterdon/ Somerset
Region 15 Cranford 908 709 9440	Union
Region 17 Parsippany 973 515 0101	Morris
Region 19 West NY 201 861 1266	Hudson – North
Region 20 Jersey City 201 653 6634	Hudson – South
Region 21 South Orange 973 762 6866	Essex
Region 23 Emerson 201 265 6200	Bergen – East
Region 25 Hasbrouck Heights 201 292 8093	Bergen – West
Region 27 Wayne 973 694 0154	Passaic County
Region 28 Stanhope 973 347 5717	Sussex/Warren
Region 29 Hamilton Square 609 689 9580	Higher Education

- **Meet or speak with PEOSH**

PEOSHA staff can be helpful to local associations who have questions about how to make the strongest case for an inspection. They may be familiar with the school district, and they are likely to be familiar with the types of hazards of concern to the local. However, making an inquiry is not a request for PEOSH to take action – it is simply information gathering for a possible complaint in the future.

Be aware of PEOSH strengths and weaknesses

There are many good reasons for calling PEOSH. Employees may be in “imminent” danger. Or an employer has been notified about hazardous conditions and the response was unsatisfactory and the hazard remained. Or employees believe notifying the employer directly is too risky. However, before contacting PEOSH, employees should become familiar with some of the agency’s limitations:

What’s not regulated?

PEOSH standards do not cover every hazard, and many current standards are not protective enough. For example,

- There are no standards regulating extreme temperatures, workplace violence or other issues listed in the box.
- Standards regulating noise and chemicals are intended for industrial workplaces and will rarely be violated in schools except, perhaps, in shop situations.
- There are only unenforceable “guidelines,” not standards, for computer ergonomics and tuberculosis prevention.

Complaining to PEOSH about these hazards – or any of the “under-regulated” hazards – may not be enough to trigger an inspection or to get an employer to make changes even though a PEOSH inspection occurred. And even though the PEOSH Act’s “General Duty Clause” legally requires employers to maintain safe and healthful workplaces “free of

recognized hazards,” the agency has rarely tried to enforce this provision of the law.

What is regulated?

Some PEOSH regulations that are useful in the school setting are listed in the box. Health standards are listed first, then safety standards. By far the most common association complaint to PEOSH involves the first standard listed – the NJ Indoor Air Quality (IAQ) standard. Links to the IAQ and Hazard Communication standards can be found on the PEOSH DHSS web page and the NJEA health and safety site. All other standards can be viewed on the federal Occupational Safety and Health Administration (OSHA) web page, www.osha.gov.

Limited staff

PEOSH has a limited number of staff working in education, consultation, and enforcement. The staff includes 7 safety officers, 2 positions are vacant, and 5 health officers, 1 position is vacant. The Department of Health is charged with making inspections in occupational health and environmental control; medical and first aid; toxic and hazardous substances; respiratory protective equipment; and sanitation. The Department of Labor and Workforce Development (LWD) is charged with making inspections in all other regulated areas, including safety, record keeping, and discrimination.

Try the threat of an inspection first

At its current staffing and inspection levels, PEOSH would take at least 20 years to inspect each of the 10,000 public workplaces in New Jersey just once. Because of weak regulations and limited PEOSH staff, the threat of an inspection may be more effective than an actual inspection. As one local association health and safety committee member said, “If you haven’t used the inspection as a threat, it’s too soon to file a complaint.” Some school districts will be wary of having an outside group inspecting their facilities, telling them what to do, and possibly fining them. Administration may well increase their cooperation with the local association under threat of a PEOSH inspection.

Useful PEOSH health standards in the school setting

- N.J.A.C. 12:100-13 Indoor air quality
- N.J.A.C. 12:100-7 Hazard Communication
- 1904: Recording and reporting occupational injuries and illnesses
- 1910.95: Occupational noise exposure
- 1910.106: Proper storage of chemicals
- 1910.132: Protective clothing
- 1910.133: Eye and face protection
- 1910.134: Respiratory protection
- 1910.138: Glove protection
- 1910.141: Sanitation of toilets and lunchrooms
- 1910.151: Medical services and first aid; emergency eye and body wash
- 1910.1000: Air contaminants
- 1910.1020: Access to medical and monitoring data
- 1910.1030: Bloodborne pathogens
- 1910.1450: Occupational exposure to hazardous chemicals in labs
- 1926.62: Lead in construction
- 1926.1101: Asbestos in construction

Useful PEOSH safety standards in the school setting

- 1910.23: Guarding floor and wall openings
- 1910.25-.26: Portable ladder safety
- 1910.36-.37: Exits
- 1910.38: Emergency preparedness
- 1910.101 Compressed gases
- 1910.107: Spray finishing
- 1910.146: Confined space entry
- 1910.147: Control of hazardous energy; electrical lockout
- 1910.157: Portable fire extinguishers
- 1910.212: Machine guarding
- 1910.242-.255: Hand and portable power tools
- 1910.252: Welding, cutting, brazing
- 1910.304: Electrical grounding, guarding

Some Serious Hazards NOT Covered by PEOSH Standards

- Extreme temperatures
- Workplace violence
- Tens of thousands of toxic chemicals (fewer than 500 are covered)
- Computer ergonomics
- Lifting
- Job stress
- Air and waterborne diseases (colds, flu, TB)

PART II: Filing a PEOSHA complaint

It is recommended that filing a PEOSH complaint always be part of an organized association strategy. A designated person within the local should file the complaint. It would be preferable to have the local’s health and safety committee file the complaint.

Once it has been determined that complaining to PEOSH may be useful, it still will be necessary to make a case loud and clear enough to get the

agency's attention and a productive outcome. The response from PEOSH may depend not only on how and when they are contacted, but also on how well the complaint addresses the severity of the hazard, the connection between the hazard and a specific PEOSH standard, and whether the hazard poses a clear and immediate danger. Take time to fill out the complaint form completely and clearly. The information provided on the complaint form will probably be the only description of the specific hazard that the inspector will see before the inspection. The inspector will base his or her research and inspection plan on this information.

The hazard description is the most important question on the form. The answer should present the hazards clearly and show that they are serious. Use extra paper if needed. Organize the answer by hazard type (i.e. chemicals, indoor air quality), by work area (i.e. classrooms, nurse's office, buses), or by another logical category. Number the hazards.

Describe the hazards. Attach documentation. This can include copies of workplace surveys, monitoring data, accident and illness reports, grievances, minutes of safety and health committee meetings, and anything else that can show the inspector that there are hazards. Specify the approximate number of employees exposed to each hazard. If it is useful, draw a picture of the hazard. If the hazard only occurs at a certain time of day, or when the windows are closed, make that clear. Be complete – if it is important to have a specific area

Under PEOSHA, school districts must

- Keep MSDSs on chemical products used or stored in the school
- Display the PEOSH Poster at all times
- Maintain Injury and Illness 300 Log and 301 Incident Reports
- Display a Summary of the Log February 1 to April 30 each year
- Give employees access to medical and monitoring data
- Notify PEOSH within 8 hours of a fatal injury or in-patient hospitalization
- Display citations for at least 15 days or until abated

The New Jersey Work Environment Council (WEC) prepared this factsheet under the direction of the NJEA. Based in Trenton, WEC provides NJEA and other organizations with technical assistance and training about workplace and environmental hazards.

inspected, complain about it, because PEOSH may limit its inspection to only those areas named in the complaint. Answers should make the seriousness of the hazard clear. If anyone has already been injured or made sick by the hazard, job titles, symptoms and a description of the injury or illness should be included.

If the complaint is about chemical exposure, the inspector may need to bring particular testing equipment. Indicate specific chemical names wherever possible and attach material safety data sheets (MSDS).

The association representative completing the complaint form should fill in the local's address and the local, work, and home phone numbers, sign the complaint and check the boxes that state "My name may be revealed to the employer." and "I want to be present when the inspection is conducted." This person's title and the name and address of the local go at the end of the complaint form. Because inspections are unannounced, this information will help to ensure that a local representative can be contacted to participate in the inspection. At the bottom of the complaint form, write in names and phone numbers for alternates who should be contacted in case the complainant is not available.

Preparing for the inspection

Once a complaint is filed, be ready for an inspection. For complaints that PEOSH considers "serious," the inspection should occur within 30 days. If it does not, call and ask about the delay.

Co-workers and local association leaders should be told that a complaint has been filed so they have time to prepare their comments to the inspector. Review the completed complaint form and the relevant PEOSH standards. Keep notes on new problems or workplace changes.

Read the publication, *OSHA Inspections*, available on the web at http://www.osha.gov/OshDoc/data_General_Facts/factsheet_inspections.pdf. It gives many details about how inspections are conducted that will help in preparing for the inspection.

Designate an employee representative

The law says that a representative authorized by employees has a right to accompany the inspection. This applies both to a requested inspection or to a scheduled PEOSH inspection. Under no circumstances may the employer choose the employees' representative.

The inspection

An inspection includes an opening conference, a "walkaround" of all or parts of the workplace, and a closing conference. It may take several hours or several days, depending on the number of hazards, workplace size, and whether or not sampling needs to be conducted. Take notes throughout the process.

After the inspection

After an inspection is conducted, a report is written and sent to the complainant, employee representative and employer explaining any violations of existing standards and/or recommendations to remedy the occupational health problem. Citations, penalties, and abatement dates will be issued with regard to the violations observed. The employer must abate the violation within a designated time frame.

If the employer cannot meet the abatement date, they must send a letter to PEOSH requesting an extension. This extension letter must include the new abatement date requested, rationale for the request, contracts, work orders, or similar documentation demonstrating a plan of action, including specific deadlines to permanently abate the hazard, and the interim control measures instituted to protect the employees.

When an employer requests an extension, PEOSH will notify the complainant or employee representative and provide them ten days to comment. If comments are not received and it is determined that the employer is making a good faith effort to abate the violations, an extension will be granted.

If comments in opposition are received, the matter will be reviewed. All parties will be notified of the determination within 20 days. Any party may appeal this determination within 15 working days to the PEOSH Review Commission.

If it is determined that the employer is not making a good faith effort to abate the violation, an Order to Comply establishing penalties will be issued within 20 days. Consult the PEOSH Procedural Regulations (N.J.A.C. 12:110-4.11) for more complete information.

Employee rights

PART III: School employee rights under PEOSHA

In using PEOSH, it is important for local associations to be aware of the following rights.

School employees have the right to information about

- Injuries and illnesses experienced by them and their co-workers, required to be recorded by the employer on PEOSH Logs.
- The employer's written health and safety program, if any.
- Any exposure they may have had to hazards such as chemicals, biological hazards or radiation.
- Medical records the district has concerning them.
- Hazardous materials they work with.
- Results of PEOSH inspections, including report and citations, if any.

School employees have the right to training about

- Hazardous materials they work with and methods to control exposure.
- The proper care and use of required personal protective equipment, including gloves, eye protection, and respirators.
- Bloodborne disease they may be exposed to and control methods.
- Proper use of fire extinguishers and dangers of fighting incipient fires.

School employees have the right to take the following actions

- Complain to the employer about dangerous conditions.
- File complaints with PEOSH and request an inspection.
- Have any citation posted by the employer at or near each area where violations occurred.
- Appeal the violations, penalties, and abatement dates on citations.
- Bring matters of concern before the PEOSH Advisory Board.

School employees have the right to the following protections

- Not be identified to the employer as the source of the complaint.
- Respond privately and confidentially to questions from a PEOSH inspector and point out hazards.

- Not be discriminated against for exercising their rights.

Employees filing complaints have the right to

- Be present at and participate in all phases of the inspection, from the opening conference through the closing conference, unless they have asked to remain anonymous.
- Receive payment for “normal wages” from the employer for the time spent during the PEOSH inspection.

Association leaders have the right to

- Accompany the PEOSH inspector, point out hazards, and observe any PEOSH monitoring.
- Receive payment for “normal wages” from the employer for the time spent during the PEOSH inspection.

Protection from retaliation for exercising PEOSHA rights

Although employees have rights under PEOSHA, they may not be that easy to enforce. School districts may respond negatively if employees exercise them. Even though the law is on the employee's side, it could be a long wait to obtain justice. It is best for members to work through the local association and UniServ representatives to help avoid retaliation for exercising these rights.

What your association can do:

- Form a health and safety committee to monitor conditions in the workplace.
- Negotiate health and safety language.
- File grievances regarding unsafe conditions using existing contract language.
- See that training is provided through inservice days.
- Assure that the district complies with the N.J. Public Employee Occupational Safety and Health Act (PEOSH).
- Work with parent and community groups to eliminate and/or prevent hazardous conditions.

For Assistance:

- Contact your association representative immediately. Your local or the NJEA UniServ office can help you with Workers' Compensation. You are entitled under state law (N.J.S.A.18A:30-2.1) “...to full salary without loss of sick days for up to one year...” and all medical treatment.

Inspections and resources

New Jersey's Healthy School Facility Environments web pages
www.state.nj.us/health/healthyschools

AHERA, NESHAP, and Subchapter 8 inspections, investigation of fiber release episodes, meetings with parents and school district administration

New Jersey Department of Health and Senior Services (DHSS) Indoor Environments Program
609-826-4950
<http://www.state.nj.us/health/eohap/asbestos/index.shtml>

Link to The ABCs of Asbestos in Schools (E-31) and other EPA asbestos in schools publications
http://www.epa.gov/asbestos/pubs/asbestos_in_schools.html

PEOSH inspections, investigation of public school employee exposure, meetings with public school employees and public school district administration

New Jersey Department of Health, Public Employee Occupational Safety and Health (PEOSH) Program
609-984-1863 <http://www.nj.gov/health/workplacehealthandsafety/peosh/>
Links to factsheets on general and construction asbestos standards at <http://www.nj.gov/health/workplacehealthandsafety/peosh/peosh-health-standards/asbestoscon.shtml>

Investigations of unlicensed asbestos abatement contractors, list of licensed contractors, monitors
New Jersey Department of Community Affairs (DCA)
Office of Asbestos 609-633-2159
www.state.nj.us/dca/divisions/codes/offices/asbestos.html

Investigation of corruption in school construction projects
NJ Office of the Attorney General
Division of Criminal Justice
609-292-4925

OSHA inspections of asbestos exposure to privatized school employees and construction and demolition workers
Avenel, 732-750-3270, Hunterdon, Middlesex, Somerset, Union, Warren counties
Marlton, 856-596-5200, Southern New Jersey
Parsippany, 973-263-1003, Bergen, Passaic counties
Hasbrouck Heights, 201-288-1700, Essex,
Hudson, Morris, Sussex counties

OSHA Asbestos home Page:
www.osha.gov/SLTC/asbestos/index.html