

**FY 2017 Comprehensive
Federal Annual Monitoring Evaluation (FAME) Report**

**State of New York
Public Employee Safety and Health (PESH) Bureau**



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**Prepared by:
U. S. Department of Labor
Occupational Safety and Health Administration
Region II
New York, NY**



Contents

I.	Executive Summary.....	3
II.	State Plan Background.....	4
	A. Background.....	4
	B. Major New Issues.....	5
III.	Assessment of State Plan Performance.....	5
	A. Data and Methodology.....	5
	B. Review of State Plan Performance	6
	1. Program Administration.....	6
	2. Enforcement.....	7
	3. Review Procedures.....	10
	4. Standards and Federal Program Changes (FPCs) Adoption.....	10
	5. Variances.....	12
	6. State and Local Government Worker Program.....	12
	7. Whistleblower Program.....	13
	8. Complaint About State Program Administration (CASPA).....	14
	9. Voluntary Compliance Program.....	14
	10. State and Local Government 23(g) On-Site Consultation Program.....	15

Appendices

Appendix A – New and Continued Findings and Recommendations.....	A-1
Appendix B – Observations and Federal Monitoring Plans.....	B-1
Appendix C – Status of FY 2016 Findings and Recommendations.....	C-1
Appendix D – FY 2017 State Activity Mandated Measures (SAMM) Report.....	D-1
Appendix E – FY 2017 State OSHA Annual Report (SOAR).....	E-1

I. Executive Summary

The purpose of this report is to assess the New York Public Employee Safety and Health (PESH) State Plan's performance for Fiscal Year (FY) 2017, and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) reports.

PESH is responsible for protecting the health and safety of more than two million state and local government workers in New York. PESH continues to have a significant presence in state and local government workplaces through its inspection activity, partnerships, and outreach activity. PESH conducted a total of 1,746 inspections in FY 2017 – 6% above the projected goal of 1,650 and significantly more than the 1,418 inspections conducted in FY 2016. The increase in enforcement activity was attributed to newly hired compliance staff completing the required training and being approved to conduct inspections. PESH conducted a total of 322 consultation visits compared to 288 visits conducted in FY 2016 – increasing the number of consultation visits conducted during FY 2017 by 12%.

In recent years, legislation was passed in New York that requires safe patient handling (SPH) programs to be implemented in state healthcare facilities. Members of PESH's Healthcare Strategic Plan Committee continued to work with healthcare facilities and taskforce groups to provide education regarding injuries suffered while providing residential/patient care, as well as the benefits of effective safe patient handling programs. In FY 2017, OSHA showcased PESH's best practices related to SPH on its public webpage.

Last year's FAME report included no findings and seven observations. This year, one observation regarding workplace retaliation screening procedures was converted to a finding, and an observation related to the subject of Petition for Modification of Abatement (PMA) was continued. The remaining five observations were appropriately addressed and closed.

During the comprehensive on-site case file review, OSHA identified one new finding and six new observations. The new finding was related to incomplete calibration information and sampling data not being entered into the OSHA Information System (OIS). The six new observations were in regard to the following issues: documentation of next-of-kin (NOK) notification of PESH's involvement and inspection results, inadequate evidence to support violations, missed violations, inaccurate workplace retaliation settlement procedures, determinations in workplace retaliation cases not being based on substantive evidence and sound legal reasoning, and PESH's Consultation Policy and Procedures Manual (CPPM) not being updated to reflect current policies addressed in OSHA's CPPM (CSP 02-00-003) dated November 19, 2015. In summary, this report contains a total of two findings and seven observations.

Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and related federal monitoring plans. Appendix C describes the status of previous findings with associated completed corrective actions.

II. State Plan Background

A. Background

The New York Department of Labor is designated as the agency responsible for administering the State Plan throughout the state of New York. Roberta Reardon, the Commissioner of Labor, has full authority to enforce and administer all laws and rules protecting the safety and health of all state and local government workers in the state and its political subdivisions. In addition to the State Plan’s enforcement responsibilities, PESH provides free on-site consultation and training services to state and local government agencies, upon request.

PESH consists of one central office in Albany, New York, and eight district offices located in Binghamton, Syracuse, Utica, Rochester, Buffalo, White Plains, Garden City, and New York City (Manhattan). The PESH State Plan applies to all state and local government employers in the state, including: state, county, town, and village governments, as well as public authorities, school districts, and paid and volunteer fire departments.

Private sector enforcement is retained under federal jurisdiction while private sector consultative services are provided by the New York State Department of Labor-Division of Safety and Health (NYSDOL-DOSH) Consultation Services Bureau under Section 21(d) of the OSH Act. PESH adopted all applicable OSHA safety and health standards either identically or through alternative means. However, the PESH ACT does not allow for the issuance of “first instance” monetary penalties for state and local government employers found in violation of PESH standards. Per diem penalties can be assessed when failure-to-abate (FTA) notices are issued.

The table below presents PESH’s funding history over the past five years:

FY 2013-2017 PESH Funding History					
Fiscal Year	Federal Award (\$)	State Plan Match (\$)	100% State Plan Funds (\$)	Total Funding (\$)	Percentage of State Plan Contribution
2017	\$3,705,200	\$3,705,200	\$1,209,200	\$8,619,600	57.0%
2016	\$3,705,200	\$3,705,200	\$1,226,400	\$8,636,800	57.1%
2015	\$3,688,600	\$3,688,600	\$1,243,000	\$8,620,000	57.2%
2014	\$3,688,600	\$3,688,600	\$1,043,000	\$8,420,200	56.2%
2013	\$3,667,600	\$3,667,600	\$1,117,700	\$8,452,900	55.6%

In the FY 2017 grant application, PESH allocated for 37 enforcement staff and had 26 onboard; 16.5 safety and health consultants were allocated for and 15.5 were onboard. They also have 2.5 whistleblower investigators onboard. PESH does not meet staffing expectations (29 safety/21 health); however, as a state and local government-only State Plan PESH is not subject to required benchmark levels.

B. Major New Issues

None.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2017 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A four person OSHA team (including a whistleblower investigator) was assembled to conduct the comprehensive on-site case file review. The on-site case file review was conducted at PESH's Albany Office during February 12 – 16, 2018. A total of 116 safety, health, and whistleblower inspection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (Oct 1, 2016 through September 30, 2017). The selected population included:

- 14 whistleblower case files
- 24 consultation case files
- 78 enforcement case files (52 safety and 19 health, fatality/hospitalizations, complaints, planned, referrals, and seven PMAs)

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

- State Activity Mandated Measures Report (Appendix D)
- State Information Report (SIR)
- Mandated Activities Report for Consultation (MARC)
- State OSHA Annual Report (SOAR) (Appendix E)
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Comprehensive on-site case file review

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon Further Review Level (FRL) which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2017 State Activity Mandated Measures Report and includes the FRL for each measure.

B. Review of State Plan Performance

1. PROGRAM ADMINISTRATION

a) Training

PESH continues to provide compliance safety and health officers (CSHOs) the opportunity to attend the OSHA Training Institute (OTI) for needed safety and health technical training. During FY 2017, 38 staff attended 59 training courses.

b) OSHA Information System (OIS)

PESH uses OIS data for tracking purposes. The FRL for average lapse time for safety is +/- 20% of the two-year national average of 45.29 days which equals a range of 36.23 days to 54.35 days. During FY 2017, PESH's average lapse time for citations was calculated at 53.76 days for safety – a slight decrease from 57.90 days in FY 2016 and within the acceptable FRL range. The FRL for average lapse time for health is +/- 20% of the two-year national average of 56.03 which equals a range of 44.82 days to 67.24 days. PESH's health lapse time was calculated at 73.25 days, which although is slightly higher than the acceptable FRL range (SAMM #11), is a significant improvement from 97.37 days in FY 2016. OSHA will closely monitor this issue during the next performance period.

OIS Data/Information

Finding 17-01

Thirteen enforcement health case files (where sampling was performed) were reviewed resulting in finding that data/information was incomplete and/or not entered into OIS. For example:

- Pre-and post-calibration information was missing in five of the 13 (38%) case files reviewed.
- Sampling data collected was not entered into OIS in 12 of the 13 (92%) case files reviewed.

Recommendation 17-01

PESH enforcement should ensure that when sampling is performed complete data is entered in the OIS system on the appropriate form.

c) State Internal Evaluation Program (SIEP) Report

The New York SIEP Report incorporates both field assessments performed by supervisors and case file assessments performed by a program manager. PESH conducts at least one field and one case file assessment for each inspector as well as for each consultant. These assessments were performed and documented in FY 2017 and FY 2016.

d) Staffing

Staffing continues to remain consistent – the total FTEs allocated for PESH in FY 2017 and FY 2016 was 83. PESH currently has 64 FTEs onboard of which 26 fall under enforcement, 15 are under consultation (23(g) state and local government workplaces), and the remaining 23 are managers or administrative staff. During FY 2017 and FY 2016, PESH did not experience furloughs or hiring freezes.

2. ENFORCEMENT

a) Complaints

During this evaluation period, PESH responded to 302 complaints with an average response time of 8.02 days from notification. This is a slight decrease from the 8.98 days in FY 2016 and is within the negotiated level of ten days (SAMM #1A). The average number of days to initiate complaint investigations was 4.40 days in FY 2017 which is above the negotiated level of one day (SAMM #2a). This is a significant decrease from the 10.50 days in FY 2016. During both FY 2017 and FY 2016, PESH did not receive any imminent danger complaints or referrals (SAMM #3) and they did not receive any denials of entry (SAMM#4).

During the review of complaint case files, 11 of the 17 (65%) case files contained documentation that the employer and worker representative were provided with a copy of the complaint. PESH's own internal filed audits indicate that employers and worker representatives are provided with a copy of the complaint during the opening conference. OSHA is recommending that PESH ensure that all case files contain documentation that a copy of the complaint was given to the employer and worker representative at the opening conference as required in PESH's Field Operations Manual (FOM), Chapter 9, Section (A)(9)(a).

b) Fatalities

During FY 2017, the number of state and local government worker fatalities reported to PESH was 22 compared to 18 reported in FY 2016. Of the 22 fatalities reported in FY 2017, only 16 were determined to be "work-related." Case file review during this evaluation revealed that citations were issued to employers who failed to notify PESH of a fatality within eight hours. Responses to fatalities were 100% – a slight increase from the 90% response time in FY 2016 (SAMM#10).

Next-of-Kin Involvement / Next-of-Kin Notification of Investigation Results

Observation 17-01

Of the 16 fatality case files reviewed, two (13%) lacked evidence/documentation that the next-of-kin was notified of PESH's involvement, and three (19%) lacked evidence that the next-of-kin were notified of the results of PESH's investigation.

Federal Monitoring Plan 17-01

In FY 2018, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

c) Targeting and Programmed Inspection

PESH conducted a total of 1,746 inspections in FY 2017 which was 6% above the projected goal of 1,650 and significantly more than the 1,418 inspections conducted in FY 2016. Safety staff conducted 1,212 inspections (1% above the goal) and the industrial hygiene staff conducted 534 inspections (19% above the goal) (SAMM #7). PESH focused its inspection resources within the following three state and local government agencies targeted for enforcement interventions:

- Police Protection – 84 inspections
- Fire Service – 91 inspections
- Nursing Care Facilities/Hospitals – 18 inspections

The FRL for percent in-compliance for safety inspections is +/- 20% of the two-year national average of 29.53% which equals a range of 23.62% to 35.44%. PESH's percent in-compliance for safety is 21.79% which is lower than the FRL. The FRL for percent in-compliance for health inspections is +/- 20% of the two year national average of 35.78% which equals a range of 28.62% to 42.94%. PESH's percent in-compliance for health is 38.81% which is slightly above the FRL (SAMM #9).

During FY 2017 and FY 2016 there were no significant cases noted.

d) Citations and Penalties

A review of case files with violations showed a continued improvement in documentation to support the violations from previous years. Of the 71 enforcement case files reviewed, 38 had citations issued.

Inadequate Evidence to Support Violations

Observation 17-02

In five of the 38 (13%) case files reviewed with violations, evidence to support the violations was inadequate. Examples include defects on forklifts not addressed, and missing worker exposure information not documented on the OSHA 1B or listed on the field notes.

Federal Monitoring Plan 17-02

In FY 2018, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

Missed Violations

Observation 17-03

Injury/illness data was not collected and/or sufficiently cited nor was there documentation that the logs were reviewed by CSHOs for injury/illness trends in 14 of the 62 (23%) case files reviewed that required the SH 900 logs. In one of the health case files reviewed, there were missed opportunities to evaluate the exposures to chlorine during cylinder change outs and to issue citations under the respiratory protection standard.

Federal Monitoring Plan 17-03

In FY 2018, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

PESH issued 3,813 violations in FY 2017 compared to 3,649 violations issued in FY 2016 – an increase of 164 (4.5%) violations. Of the 3,813 violations issued, 3,056 were serious, none were willful, 21 were FTA, five were repeats, and the remaining 731 were other-than-serious (FY 2017 NY SOAR).

PESH's violations continue to be above average. The FRL for the average number of violations per inspection with violations by violation type is +/- 20% of the two-year national average of 1.83 for serious/willful/repeat (S/W/R) violations which equals a range of 1.46 to 2.20. PESH's S/W/R average is 4.48 violations which is above the FRL range. The FRL for other-than-serious (OTS) violations is +/- 20% of the two-year national average of 0.99 which equals a range of 0.79 to 1.19. PESH's OTS average is 1.07 which is also above the FRL range (SAMM #5).

Violations for the most part appeared to be classified and grouped appropriately. PESH does not issue monetary penalties except in cases of FTA violations. During FY 2017, PESH issued 21 FTAs and collected a total of \$43,253.00 in penalties (FY 2017 NY SOAR).

e) Abatement

The review of case files during this audit revealed that adequate verification/evidence of abatement was being obtained in the case files that had citations. Follow-up inspections were performed when indicated.

Petition for Modification of Abatement (PMA)

Observation 17-04 (FY 2016-OB-03)

In two of the eight (25%) case files reviewed that included PMAs, PMAs were granted without the employer providing the reason why the PMA was needed, nor were the interim steps necessary to protect workers provided and/or adequate.

Federal Monitoring Plan 17-04

In FY 2018, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

f) Worker and Union Involvement

PESH continued to follow proper procedures outlined in their FOM with regard to appropriate notification being delivered to workers and their union representatives. Of the 78 case files reviewed, 55 (71%) involved unions. Union representation was involved in 99.77% (SAMM #13) aspects of the inspection process. In those few cases where the union was not available during the inspection, the case file contained documentation that contact had been made with the representative, or the union representative declined to participate in the inspection process.

3. REVIEW PROCEDURES

a) Informal Conferences

PESH has no first instance penalties and therefore conducted very few informal conferences. Proper procedures are followed if an informal conference is requested by an employer and if no settlement can be reached, the case is turned over to the Industrial Board of Appeals (IBA). During FY 2017, six informal conferences were conducted compared to seven informal conferences in FY 2016.

b) Formal Review of Citations

Any investigation that is contested is turned over to the IBA. During FY 2017, PESH reported six new contested cases that were closed during that same period. FY 2016, PESH had six contested cases and closed five during that same period.

4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

In accordance with 29 CFR 1902, State Plans are required to adopt standards and Federal Program Changes (FPCs) within a six-month time frame. State Plans that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. During this period, PESH responded in a timely manner with the required notice of intent to adopt. The tables below provide a complete list of the federal directives and standards which required action during this performance period:

a) Standards Adoption

Standards Requiring Action	Federal Register Date	Adopted Identical	Date Promulgated
29 CFR PART - 1910,1915,1926 Final Rule for Occupational Exposure to Respirable Crystalline Silica	03/25/2016	Yes	09/26/2016
29 CFR PART – 1902, 1904 Final Rule to Improve Tracking of Workplace Injuries & Illnesses	05/12/2016	Yes	Adoption dependent synchronization of the federal reporting system due to NAICS codes.
29 CFR 1902, 1903 Interim Final Rule on Maximum Penalty Increases	07/01/2016	No	State Plans covering state and local government only are not required to collect monetary penalties and, therefore are not required to adopt the increase in maximum penalties.
Final Rule on walking-working Surfaces & PPE (Fall Protection Systems)	11/18/2016	Yes	5/01/17
Final Rule on Occupational Exposure to Beryllium	01/09/2017	Yes	07/09/2017
Final Rule – Implementation of 2017 Annual Adjustment to Civil Penalties for Inflation	01/18/2017	No	N/A

Electronic Reporting Rule

On May 12, 2016, OSHA published the Final Rule to Improve Tracking of Workplace Injuries and Illnesses, effective January 1, 2017. The rule required all affected employers to submit 300A log summaries in OSHA’s Injury Tracking Application (ITA) by the specified due date of July 1, 2017. This deadline was subsequently pushed back to December 15, 2017.

In its Fall 2017 Regulatory Agenda, OSHA announced that it intends to issue a proposal to reconsider, revise, or remove provisions of the Improve Tracking of Workplace Injuries and Illnesses final rule, 81 FR 29624 (May 12, 2016).

State Plans were required to adopt an “at least as effective as” rule within six months of promulgation, by November 14, 2016. However, given OSHA’s intent to issue a proposed rule to reconsider, revise or remove provisions of the Improve Tracking of Workplace Injuries and Illnesses rule, a number of State Plans, including PESH, have delayed adoption until this additional rulemaking is complete.

b) Federal Program Change (FPC) Adoption

FPCs Requiring Action and Federal Directive Number	Date of Directive	Adopted Identical	Adoption Date
CPL 02-00-159 Field Operations Manual	10/01/2015	No	N/A
TED 01-00-020 Mandatory Training Program for OSHA Whistleblower Investigators	10/08/2015	Yes	12/01/2015
CSP 02-00-03 Consultation Policies & Procedures Manual	11/19/2015	No	N/A
CPL 02-03-007 Whistleblower Investigations Manual	01/28/2016	No	N/A
CPL 03-00-020 NEP Shipbreaking	03/07/2016	No	N/A
CPL 02-00-160 Field Operations Manual	08/02/2016	No	N/A (Not adopting penalty increase)
CPL 02-01-058 Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence	01/10/2017	No	(Note: PESH has had a WPV program rule since 2009.)

5. VARIANCES

Variance requests were not received or processed during FY 2017 and FY 2016 (NY SOARs FY 2017 and FY 2016).

6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

One hundred percent (100%) of all inspections conducted by PESH occurred in the state and local government agencies during FY 2017 and FY 2016. PESH does not contain provisions for the issuance of monetary penalties for state and local government employers found not to be in-compliance with applicable standards on a first instance basis (except in cases when FTA notices are issued). If an employer incurs penalties for

violations, the employer may have an informal conference with PESH or can contest the penalties and be heard by the New York State Industrial Board of Appeals (IBA). During FY 2017, PESH conducted six informal conferences – one less than the seven conducted during FY 2016.

7. WHISTLEBLOWER PROGRAM

PESH documented 11 allegations of workplace retaliation during FY 2017 compared to 22 allegations received in FY 2016. However, the number of documented allegations (docketed investigations) is likely much higher and PESH is actually investigating far more complaints than statistics demonstrate. This is discussed in greater detail below. PESH has made great strides in improving both the investigative process and the quality of their investigations – the implementation of the investigative conference is just one example of this.

During this evaluation period, Region II's Assistant Regional Administrator for the Whistleblower Protection Programs reviewed 14 case files (eight from FY 2016 and six from FY 2017). Of the 14 case files reviewed, six were administratively closed (no full field investigation) and eight were docketed full field investigations. Of the eight docketed files reviewed, seven (88%) were dismissed and one was withdrawn.

Workplace Retaliation Screening Procedures

Finding 17-02 (FY 2016-OB-05)

Worker retaliation case files did not contain evidence that complaints were docketed in a timely fashion which affords complainants and respondents their due process rights. For example:

- Five of the six (83%) administratively closed complaint case files were open for extensive periods of time when the investigator had sufficient information to either docket the complaint or administratively close the complaint. Because complaints were not officially docketed in WebIMIS and docket letters not issued, respondents were not advised of the allegation – even though the investigations had progressed beyond the screening phase and had been initiated.

Recommendation 17-02

PESH should ensure that case files are properly screened and docketed in a timely manner in accordance with the Field Operations Manual (FOM) *Chapter X, Discrimination Complaints*.

Workplace Retaliation Settlement Procedures

Observation 17-05

PESH did not follow its procedures detailed in the Field Operations Manual (FOM) *Chapter X, Settlements*. For example:

- In one of the six (17%) administratively case files reviewed, PESH did not review the settlement agreements to determine if they were fair, adequate, reasonable, and consistent with the purpose and intent of the New York State Labor Law.
- In two of the eight (21%) docketed case files reviewed, PESH did not ensure these settlements adhered to the criteria for approval of third party agreements. PESH failed to determine if the settlement agreements prohibited complainants from engaging in future protected activity, if the agreements restricted complainants from participating in investigations or testifying in proceeding relating to matters that arose during complainant's employment (gag order), and if complainant's decision to enter into the agreement was voluntary.

Federal Monitoring Plan 17-05

In FY 2018, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

Sound Legal Reasoning

Observation 17-06

In two of the 14 (14%) workplace retaliation case files reviewed, the determination reached was not based on substantive evidence in the case file and sound legal reasoning. One of the dismissed cases alleged three separate adverse actions. Only one of the three was investigated, and the complaint was dismissed. Absent an investigation of the two other alleged adverse actions, it is unclear if the determination was appropriate. Another administratively closed complaint remained in the screening phase for more than five months although the case file indicated a limited investigation had been initiated. It did not appear that the respondent was notified of the allegation leaving it unclear if the appropriate determination was reached.

Federal Monitoring Plan 17-06

In FY 2018, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

No CASPAs were filed against PESH during FY 2017 and FY 2016 (NY SOAR, FY 2017 and FY 2016).

9. VOLUNTARY COMPLIANCE PROGRAM

PESH does not administer a Voluntary Compliance Program.

10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM

PESH's state and local government employee's consultation program exceeded its Annual Performance Plan projections in both FY 2017 and FY 2016. PESH conducted a total of 322 consultation visits during FY 2017, 52 visits (19%) above the projected goal of 270 visits. In FY 2016, 288 consultation visits were conducted – 12 visits (4%) fewer than the projected 300 visits (NY SOAR, FY 2017 and FY 2016). The percentage of visits with hazards abated within a timely manner increased from 84.46% in FY 2016 to 91.49% in FY 2017 (MARC #4a).

A total of 24 consultation case files were reviewed. The case files were broken down as follows: six training/assistance (T/A), three full service, and 15 limited service visits.

Consultation Policy and Procedures Manual (CPPM)

Observation 17-07

Written policies and procedures for PESH's on-site consultation program are not equivalent or at least as effective as OSHA's latest CPPM (CSP 02-00-003) dated November 19, 2015. Examples of where PESH's (September 20, 2005) CPPM differs from OSHA's CPPM include, but are not limited to, the following:

- If the employer elects to have union representation, representatives may participate in the on-site visit. (OSHA's FY 2015 CPPM requires unions to be invited to participate in the on-site visit.)
- There is no requirement to provide a copy of the list of identified hazards to the union. (OSHA's FY 2015 CPPM requires that the union be provided with a copy of the list of identified hazards.)
- In both PESH's CPPM and the report to the employer, there is no requirement to post the list of hazards identified at the worksite. (OSHA's FY 2015 CPPM requires the list of hazards be posted at the worksite for at least three days or until the hazard is abated/corrected.)
- A process to grant abatement extensions, as well as providing an updated list of hazards after an extension is granted, are not covered. (OSHA's FY 2015 CPPM requires the employer to meet four criteria for an extension and when granted the consultation program must prepare and provide an updated list of hazards.)
- There is no requirement to submit a list of hazards to the employer and the employee representative no later than 20 calendar days from the closing conference date as stated in OSHA's FY 2015 CPPM.
- PESH never adopted FORM 33; however, an evaluation of the worksite's Safety and Health Management System (SHMS) is required for full service consultation

visits. All three (100%) of the full service visit case files reviewed did not contain a SHMS evaluation.

Federal Monitoring Plan 17-07

In FY 2018, OSHA will work with PESH to update its CPPM to reflect the policies and procedures in OSHA's CSP 02-00-003 including, but not limited to, the following:

- Requirement to invite union representation to participate in the on-site visit.
- Union and/or worker representative will be provided a copy of the list of identified hazards.
- The list of identified hazards will be posted at the worksite for at least three days or until the hazard is abated/corrected.
- A limited number of case files will be selected randomly and reviewed to determine if PESH is conducting the required SHMS evaluations and including such documentation in the case files.
- Employer, union, and/or worker representative will be provided a list of hazards no later than 20 calendar days from the closing conference date.
- PESH will require an evaluation of the worksite's SHMS for full service consultation visits.

Appendix A – New and Continued Findings and Recommendations

FY 2017 PESH Comprehensive FAME Report

FY 2017-#	Finding	Recommendation	FY 2016-# or FY 2016-OB-#
FY 2017-01	<p><i>OSHA Information System (OIS) Data/Information</i> Thirteen enforcement health case files (where sampling was performed) were reviewed resulting in finding that data/information was incomplete and/or not entered into OIS. For example:</p> <ul style="list-style-type: none"> • Pre-and post-calibration information was missing in five of the 13 (38%) case files reviewed. • Sampling data collected was not entered into OIS in 12 of the 13 (92%) case files reviewed. 	PESH enforcement should ensure that when sampling is performed, complete data is entered in the OIS system on the appropriate form.	
FY 2017-02	<p><i>Workplace Retaliation Screening Procedures</i> Worker retaliation case files did not contain evidence that complaints were docketed in a timely fashion which affords complainants and respondents their due process rights. For example:</p> <ul style="list-style-type: none"> • Five of the six (83%) administratively closed complaint case files were open for extensive periods of time when the investigator had sufficient information to either docket the complaint or administratively close the complaint. Because complaints were not officially docketed in WebIMIS and docket letters not issued, respondents were not advised of the allegation – even though the investigations had progressed beyond the screening phase and had been initiated. 	PESH should ensure that case files are properly screened and docketed in a timely manner in accordance with its Field Operations Manual (FOM) Chapter X Discrimination Complaints.	FY 2016-OB-05

Appendix B – Observations Subject to New and Continued Monitoring

FY 2017 PESH Comprehensive FAME Report

Observation # FY 2017-OB-#	Observation# FY 2016-OB-#	Observation	Federal Monitoring Plan	Current Status
	FY 2016-OB-01 FY 2015-OB-02	<i>Excessive Abatement Periods</i> Abatement was found to be excessive in six of the 20 (30%) complaint case files reviewed.		Closed
FY 2017-OB-01		<i>Next-of-Kin Involvement / Next-of-Kin Notification of Investigation Results</i> Of the 16 fatality case files reviewed, two (13%) lacked evidence/documentation that the next-of-kin was notified of PESH’s involvement, and three (19%) lacked evidence that the next-of-kin was notified of the results of PESH’s investigation.	In FY 2018, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.	New
FY 2017-OB-02		<i>Inadequate Evidence to Support Violations</i> In five of the 38 (13%) case files reviewed with violations, evidence to support the violations was inadequate.	In FY 2018, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.	New
FY 2017-OB-03		<i>Missed Violations</i> Injury/illness data was not collected and/or cited nor was there documentation that the logs were reviewed by CSHOs for injury/illness trends in 14 of the 62 (23%) case files reviewed that required the SH 900 logs. In one of the health case files reviewed, there were missed opportunities to evaluate the exposures to chlorine during cylinder change outs and to issue citations under the respiratory protection standard.	In FY 2018, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.	New
	FY 2016-OB-02	<i>Complaint Response Time</i> Of the 20 complaint case files reviewed, three (15%) case files revealed an excessive time period (more than 10 days) between receipt of the complaint and inspection.		Closed

Appendix B – Observations Subject to New and Continued Monitoring

FY 2017 PESH Comprehensive FAME Report

Observation # FY 2017-OB-#	Observation# FY 2016-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2017-OB-04	FY 2016-OB-03	<p><i>Petition for Modification of Abatement (PMA)</i> In two of the eight (25%) case files reviewed that had PMAs, the PMAs were granted without the employer providing the reason why the PMA was needed, nor were the interim steps necessary to protect workers provided and/or adequate.</p>	In FY 2018, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.	Continued
	FY 2016-OB-04	<p><i>Workplace Retaliation Interviews/Case File Documentation</i> One of the six (16%) case files reviewed lacked evidence that a complainant interview was conducted.</p>		Closed
	FY 2016-OB-05	<p><i>Workplace Retaliation Screening Procedures</i> Two of the six (33%) workplace retaliation case files reviewed showed that retaliation complaints were not appropriately screened.</p>		Converted to a finding
	FY 2016-OB-06	<p><i>Workplace Retaliation Documentation</i> Workplace retaliation documentation did not comply with PESH’s Whistleblower Manual.</p>		Closed
	FY 2016-OB-07	<p><i>Workplace Retaliation Confidentiality Procedures</i> Confidentiality procedures during investigative conferences were not in place.</p>		Closed

Appendix B – Observations Subject to New and Continued Monitoring

FY 2017 PESH Comprehensive FAME Report

Observation # FY 2017-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2017-OB-05	<p>PESH did not follow its procedures detailed in the Field Operations Manual (FOM) <i>Chapter X, Settlements</i>. For example:</p> <ul style="list-style-type: none"> • In one of the six (17%) administratively case files reviewed, PESH did not review the settlement agreements to determine if they were fair, adequate, reasonable, and consistent with the purpose and intent of the New York State Labor Law. • In two of the eight (21%) docketed case files reviewed, PESH did not ensure these settlements adhered to the criteria for approval of third party agreements. PESH failed to determine if the settlement agreements prohibited complainants from engaging in future protected activity, if the agreements restricted complainants from participating in investigations or testifying in proceeding relating to matters that arose during complainant’s employment (gag order), and if complainant’s decision to enter into the agreement was voluntary. 	<p>In FY 2018, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.</p>	<p>New</p>

Appendix B – Observations Subject to New and Continued Monitoring

FY 2017 PESH Comprehensive FAME Report

Observation # FY 2017-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2017-OB-06	<p><i>Sound Legal Reasoning</i></p> <p>In two of the 14 (14%) workplace retaliation case files, the determination reached was not based on substantive evidence in the case file and sound legal reasoning. One of the dismissed cases alleged three separate adverse actions. Only one of the three was investigated, and the complaint was dismissed. Absent an investigation of the two other alleged adverse actions, it is unclear if the determination was appropriate. Another administratively closed complaint remained in the screening phase for more than five months although the case file indicated a limited investigation had been initiated. It did not appear that the respondent was notified of the allegation leaving it unclear if the appropriate determination was reached.</p>	<p>In FY 2018, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.</p>	<p>New</p>

Appendix B – Observations Subject to New and Continued Monitoring

FY 2017 PESH Comprehensive FAME Report

Observation # FY 2017-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2017-OB-07	<p><i>Consultation Policy and Procedures Manual (CPPM)</i> Written policies and procedures for PESH’s on-site consultation program are not at least as effective as the current CPPM (CSP 02-00-003) dated November 19, 2015. Examples where PESH’s (September 20, 2005) CPPM differs from OSHA’s CPPM include, but are not limited to, the following:</p> <ul style="list-style-type: none"> • If the employer elects to have union representation, representatives may participate in the on-site visit. (OSHA’s FY 2015 CPPM requires unions to be invited to participate in the on-site visit.) • There is no requirement to provide a copy of the list of identified hazards to the union. (OSHA’s FY 2015 CPPM requires that the union be provided with a copy of the list of identified hazards.) • In both PESH’s CPPM and the report to the employer, there is no requirement to post the list of hazards identified at the worksite. (OSHA’s FY 2015 CPPM requires the list of hazards be posted at the worksite for at least three days or until the hazard is abated/corrected.) 	<p>In FY 2018, OSHA will work with PESH to update its CPPM to reflect the policies and procedures in OSHA’s CSP 02-00-003 including, but not limited to, the following:</p> <ul style="list-style-type: none"> • Requirement to invite union representation to participate in the on-site visit. • Union and/or worker representative will be provided a copy of the list of identified hazards. • The list of identified hazards will be posted at the worksite for at least three days or until the hazard is abated/corrected. 	New

Appendix B – Observations Subject to New and Continued Monitoring

FY 2017 PESH Comprehensive FAME Report

Observation # FY 2017-OB-#	Observation	Federal Monitoring Plan	Current Status
	<p><i>Consultation Policy and Procedures Manual (CPPM) – Cont’d</i></p> <ul style="list-style-type: none"> • A process to grant abatement extensions, as well as providing an updated list of hazards after an extension is granted, are not covered. (OSHA’s FY 2015 CPPM requires the employer to meet four criteria for an extension and when granted the consultation program must prepare and provide an updated list of hazards.) • There is no requirement to submit a list of hazards to the employer and the employee representative no later than 20 calendar days from the closing conference date as stated in OSHA’s FY 2015 CPPM. • PESH never adopted FORM 33; however, an evaluation of the worksite’s Safety and Health Management System (SHMS) is required for full service consultation visits. All three (100%) of the full service visit case files reviewed did not contain a SHMS evaluation. 	<ul style="list-style-type: none"> • A limited number of case files will be selected randomly and reviewed to determine if PESH is conducting the required SHMS evaluations and including such documentation in the case files. • Employer, union, and/or worker representative will be provided a list of hazards no later than 20 calendar days from the closing conference date. • PESH will require an evaluation of the worksite’s SHMS for full service consultation visits. 	

Appendix C - Status of FY 2016 Findings and Recommendations

FY 2017 PESH Comprehensive FAME Report

There were no findings in FY 2016.

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 PESH Comprehensive FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: New York - PESH			FY 2017	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	8.02	10	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	6.51	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	4.40	1	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	2.20	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 4.48	+/- 20% of SWRU: 1.83	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 1.46 to 2.20 for SWRU and from 0.79 to 1.19 for OTS.
		Other: 1.07	+/- 20% of Other: 0.99	
6	Percent of total inspections in state and local government workplaces	100%	100%	Since this is a State and Local Government State Plan, all inspections are in state and local government workplaces.

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 PESH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
7	Planned v. actual inspections – safety/health	S: 1,212	+/- 5% of S: 1,200	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1,140 to 1,260 for safety and from 427.50 to 472.50 for health.
		H: 534	+/- 5% of H: 450	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	N/A	+/- 25% of \$2,516.80	N/A – This is a State and Local Government State Plan. The further review level is based on a two-year national average.
	a. Average current serious penalty in private sector (1-25 workers)	N/A	+/- 25% of \$1,706.10	N/A – This is a State and Local Government State Plan. The further review level is based on a two-year national average.
	b. Average current serious penalty in private sector (26-100 workers)	N/A	+/- 25% of \$2,867.94	N/A – This is a State and Local Government State Plan. The further review level is based on a two-year national average.
	c. Average current serious penalty in private sector (101-250 workers)	N/A	+/- 25% of \$3,952.26	N/A – This is a State and Local Government State Plan. The further review level is based on a two-year national average.
	d. Average current serious penalty in private sector (greater than 250 workers)	N/A	+/- 25% of \$5,063.48	N/A – This is a State and Local Government State Plan. The further review level is based on a two-year national average.

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 PESH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
9	Percent in compliance	S: 21.79%	+/- 20% of S: 29.53%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 23.62% to 35.44% for safety and from 28.62% to 42.94% for health.
		H: 38.81%	+/- 20% of H: 35.78%	
10	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.
11	Average lapse time	S: 53.76	+/- 20% of S: 45.29	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 36.23 to 54.35 for safety and from 44.82 to 67.24 for health.
		H: 73.25	+/- 20% of H: 56.03	
12	Percent penalty retained	100%	+/- 15% of 67.44%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 57.32% to 77.56%.
13	Percent of initial inspections with worker walk around representation or worker interview	99.77%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	0%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	9%	+/- 20% of 25%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 20% to 30%.
16	Average number of calendar days to complete an 11(c) investigation	857	90	The further review level is fixed for all State Plans.

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 PESH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
17	Percent of enforcement presence	N/A	+/- 25% of 1.26%	<p>N/A – This is a State and Local Government State Plan and is not held to this SAMM.</p> <p>The further review level is based on a two-year national average.</p>

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report



**PESH Federal Fiscal Year 2017
State OSHA Annual Report
(SOAR)**

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report

Annual Performance Plan Activities FFY 2017

The Division of Safety and Health (DOSHS) is one of two divisions within the Worker Protection Bureau of the New York State Department of Labor. The Division of Safety and Health administers ten programs to protect the public and working men and women of New York from hazards, accidents and injuries; one of which is the Public Employee Safety and Health (PESH) Program. The PESH Program was created in 1980 and oversees workplace protection of public employees at the state and local levels through the enforcement of OSHA and specific State regulations. Public sector employers include State, County, Town, Village governments, Public Authorities, School Districts and Paid and Volunteer Fire Departments. The PESH Program provides protection through two main functions - enforcement and consultation services.

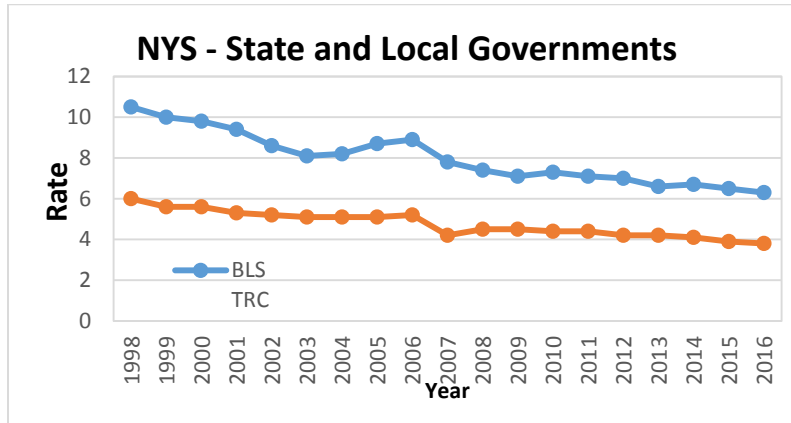
In addition, the PESH Program instituted a Strategic Plan in 1998. The PESH Strategic Plan is an initiative which focuses on select industries which have high injury and illness or Days Away, Restricted or Transfer (DART) rates. The PESH Strategic Plan consists of three distinct committees including Fire Service, Police Protection and Healthcare (specifically nursing homes and general and surgical hospitals). Each committee identifies the cause(s) of injuries to employees in their sector and focuses on building partnerships with labor and management in the development of strategies to reduce the occurrence and/or seriousness of these injuries.

The PESH Program continues to make significant progress in protecting New York State's public employees and promoting a safe and healthy workplace. The activities and accomplishments of the PESH Program and the Strategic Plan committees are identified in this report. The following are noteworthy statistical highlights and trends.

Based on the Bureau of Labor Statistics, during 2016 there were 44,600 reported injuries or illnesses to local government workers of which 3300 or approximately 7.4% were reported in the fire service. Approximately 13.7% of the 2016 injuries or illnesses to local government workers were in the law enforcement sector and approximately 5% of the injuries or illnesses to local government workers were in the hospital and nursing home sector combined. The Total Recordable Injury and Illness Incident Rate (TRC) for CY 2016 for state and local government employment was 6.3 per 100 full-time equivalent workers. This is a 3% decrease from 2015 when it was 6.5. The DART rate for CY 2016 was 3.8 which is a 2.5% decrease from CY 2015. Both the Total Recordable Injury and Illness Rates and the DART Rates have experienced a consistent trend of declining rates since the inception of the Strategic Plan in 1998. Overall the TRC Rate has decreased 40% and the DART Rate 36% over this period.

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report



*Based on BLS data
 TRC – Total Recordable Injury and Illness Rate
 DART – Days Away, Restricted, or Transfer Rate

During FFY 2017, thirty-four (34) different PESH CSHO’s conducted 1,761 inspections, compared to 1,431 inspections in FFY 2016, a 23% increase. Twenty (20) safety staff conducted 1,225 inspections compared to 966 inspections in FFY 2016 a 27% increase. Fourteen (14) industrial hygiene staff conducted 536 inspections compared to 465 inspections in FFY 2016 a 15% increase.

There were a total of 3,792 enforcement violations issued in FFY 2017 compared to the 3,649 violations issued in FFY 2016, a 4% increase. Of the total number of violations issued during FFY 2017 twenty one (21) were FTA violations, five (5) were repeat serious, 731 were non-serious and 3,056 were serious violations. There were 204,964 employees covered by the inspections performed in FFY 2017 compared to 163,023 during FFY 2016, a 20% increase in employees covered.

PESH investigated 302 complaints in FFY 2017, compared to 317 complaints in FFY 2016.

PESH performed twenty-two (22) FATCAT investigations in FFY 2017 compared to eighteen (18) investigations in FFY 2016.

PESH received eleven (11) discrimination complaints in FFY 2017, during FFY 2016 there were twenty-two (22) discrimination cases investigated. This is a 50% decrease in discrimination cases from FFY 2017 to FFY 2016.

During FFY 2017, PESH conducted 322 consultations compared to the 288 consultations in FFY 2016, an 11% increase.

PESH tracks Compliance Assistance activities for both enforcement and consultation. During FFY 2017, there were 143 Compliance Assistance visits made by eight (8) PESH consultants and nine (9) compliance assistance visits made by PESH enforcement staff. The total compliance assistance activities for FFY 2017 was 152 compared to 184 visits made in FFY 2016. The OIS system captures data regarding the total number of employees and employers affected for enforcement only. Of the 9 enforcement Compliance Assistance visits, 75 different employers were affected and 72,147 employees were affected.

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report

There were six (6) new contested cases in FFY 2017 and there were six (6) contested cases that were closed during this same period.

Total PESH penalties billed during FFY 2017 were \$712,064. Penalty collection for the year totaled \$43,253.

Progress toward Strategic Plan Goals Strategic Goal 1

The overall goal was to continue developing and implementing strategies to improve workplace safety and health for all public employees, with special focus on those in the select strategic plan industries. The Strategic Plan Performance Goals for the 5-year plan beginning in FFY 2017 were:

- Decrease the Injury and Illness Rate by 5% over 5 years in NAICS 922120 (Police Protection).
- Decrease Injury and Illness Rate by 5% over 5 years in NAICS 922160 (Fire Service)
- Decrease the Lost Work Day Rate by 5% over 5 years in the following healthcare sectors:
 - o NAICS 623110 (Nursing Care Facilities)
 - o NAICS 622110 (Hospitals)

Police Departments (NAICS 922120)

Strategic Goal: Improve workplace safety and health for all public employees.

Performance Goal #1A: Reduce Injuries and Illnesses by 5% over 5 years in NAICS 922120.
Baseline: 2012

Activity Measures:

Partnerships – This committee’s primary focus was on building partnerships with the NYS Sheriff’s Association, the various county level sheriffs’ departments and their related associations. This year, the existing partnership with the NYS Sheriff’s Association was strengthened through invitation and attendance at two different conferences. New partnerships were made with NYS Department of Homeland Security and the NYS Department of Environmental Services Training Unit.

Injury Data Collection and Analysis – The Log of Work Related Injuries and Illnesses (SH900) and the Summary of Work Related Injuries and Illnesses (SH900.1) for 2016 have been received from all participating agencies except for two counties.

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report

The Primary Outcome Measure of decreasing the Total Recordable Injury Rate in police protection agencies by 1% per year has been exceeded as shown in the table below.

The OSHA OIS system was used to assemble Consultation, Inspection and Compliance Assistance data.

Inspections – There were 84 Enforcement Inspections conducted in FFY 2017.

Consultations – There were 11 Consultation visits in FFY 2017.

Outreach– There was a total of 23 Compliance Assistance Visits completed during FFY 2017.

Primary Outcome Measures: Police Service Injury and DART Rates

Year	Baseline (2012)	2013	2014	2015	2016
Injury and Illness Rate*	16.3	14.0	13.6	13.5	12.0
% Change From Baseline	NA	14% Decrease	17% Decrease	17% Decrease	26% Decrease
DART Rate*	9.7	8.4	8.0	7.8	6.9

* SH900.1 Summary of Work Related Injuries and Illnesses

NA – Not Available

Intermediate Outcome Measures: Police Service

Measure Description	2012 Baseline	1st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	YTD
Inspection Visits	113	19	17	17	20	84
Consultation Visits	6	2	3	4	2	11
Outreach and Technical Assistance Visits	3	2	11	9	6	23

Information obtained from OIS

Note: Quarters may not equal YTD due to late OIS entries

Police Protection

Introduction:

FFY 2017 was the second year of New York State Department of Labor's, FY 2016 – 2020 Five-Year Strategic Plan. The main goal of the Police Protection Strategic Plan is to reduce the Total Recordable Injury Rate in county and local police protection agencies by 1% per year or 5% over the next 5 years. This committee focuses on injury and illness reduction in local and county law enforcement departments throughout New York State.

Partnership Activity:

Committee members continue to strengthen and identify new partnerships within the law enforcement community. During FFY 2017 members participated in two events with the NYS Association of Police Chiefs. On May 3, 2017 committee members staffed the PESH booth at the

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report

NYS Association of Police Chiefs Expo in Albany New York. The second event took place on July 24 and 25, 2017 where committee members staffed the PESH booth at the NYS Association of Police Chiefs Annual Training Conference that took place at the Sheraton Syracuse University Hotel and Conference Center in Syracuse. Each event produced new contacts and request for consultations within the law enforcement community.

Injury Data Collection & Analysis:

SH 900's and SH 900.1's for CY 2016 have been received from all participating agencies except for two counties. Information from the SH900's has been entered into a spread sheet where the Total Injury and Illness Rate and the DART (Days Away, Restricted) were calculated based on the information obtained. The results show a consistent history of lost work time reduction rates for years 2013, 2014, 2015 and 2016 when compared to the baseline of 2012.

Inspections:

There were a total of 84 inspections performed during the 2017 FFY; this is a 26% increase from last year and a 25% decrease from the baseline year of 2012.

Consultations:

There were a total of 11 consultations performed during the same period compared to 6 from the 2012 baseline year; this is a 45% increase.

Outreach:

There were a total of 23 compliance assistance activities conducted during FFY 2017; this is an 87% increase from the baseline year of 2012. This year some significant updates were made to the 2017 Law Enforcement Resource CD. A copy of the NIOSH outdoor firing range lead/ noise evaluation report and a copy of the WREMAC-Advisory-Fentanyl-Carfentanil fact sheet were both added. Also 24 different "safety CLIPS" were added. Safety Clips are a one page, law enforcement relevant training topic that is designed to be administered by a police department's training officer at the beginning of the officer's work shift. Copies of the CD can be obtained from the various district offices or PESH staff can access the files on the shared drive.

Training:

Law enforcement agencies typically avoid using civilians for their internal training programs. To help overcome this challenge, committee members have developed strategies to assist the law enforcement agencies through the creation of their "safety CLIPS" sheets. The "safety CLIPS" also provide a benefit internally within PESH, by sharing the "safety CLIPS" collection internally on a shared drive PESH staff have access to this resource to help spread awareness internally and to share with agencies during the inspection and consultation services. Record keeping strategies was a focus during each interaction with the law enforcement community. This helps ensure the accuracy of the injury illness data received from the employers.

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report

Future Activities Planned:

This committee concluded their formal outreach work with the law enforcement community as of September 30, 2017. The positive impact the committee has achieved over their seven-year effort can be seen through a consistent history of lost work time reduction rates that exceeded the goals stated in the PESH Five Year Strategic Plan Report.

Moving forward in FFY 2018 the committee will focus their efforts on NAICS code 2213 which will include the municipal water and wastewater treatment industry. Recent PESH investigations and activities in this high hazard industry has illustrated the need for additional PESH resources to help reduce the significance and number of lost work time events that have been common in this industry.

Fire Service - NAICS 922160

Strategic Goal: Improve workplace safety and health for all public employees.

Performance Goal # 1B: Reduce Injury and Illness Rate by 5% over 5 years in NAICS 922160.

Baseline Year: 2012

Activity Measures:

Partnerships – This committee continued building and maintaining partnerships with the Fireman’s Association of the State of New York (FASNY), New York State Association of Fire Chiefs (NYSAFC), various members of the New York State Division of Homeland Security and Emergency Services (NYS DHSES), county fire coordinators and New York State Emergency Managers Association (NYSEMA)

Injury Data Collection and Analysis – The BLS Work Related Injuries and Illnesses data has historically been used to assemble statistics relating to fire departments covered by this committee. Both the Total Injury and Illness Rate and DART (Days Away, Restricted) have been used to track the overall progress of this committee.

The OSHA OIS system was used to assemble Consultation, Inspection and Compliance Assistance data.

Primary Outcome Measures: Fire Service Injury and DART Rates

Year	2012* Baseline	2013*	2014*	2015*	2016*	% Change from Baseline
Injury Rate*	21.8	24.0	79.1	20.1	15.9	27.1 % decrease
DART Rate*	20.0	23.0	77.5	15.1	15.3	23.5 % decrease

* Based on BLS Data

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report

Intermediate Outcome Measures: Fire Service

Measure Description	2012 Baseline	1st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	YTD
Inspection Visits*	183	20	23	23	22	91
Consultation Visits*	25	0	14	8	9	31
Outreach and Technical Assistance Visits *	55	3	6	12	8	27

Information obtained from OIS

Note: Quarters may not equal YTD due to late OIS entries

Fire Service

Introduction:

FFY 2017 is the second year of New York State Department of Labor's FY 2016 – 2020 Five-Year Strategic Plan. This plan features some modifications to the previous plan's outcome and performance goals. The main goal of the Fire Strategic Planning is to reduce the number of injuries in state and local fire protection agencies by 1% per year or 5% for the next 5 years. The PESH Fire Strategic Plan focuses on injury and illness reduction in city and local fire departments throughout New York State.

Partnership Activity:

This committee continues to work with FASNY, NYS AFC and County Fire Coordinators as it relates to PESH activities. Members continue to network with county level emergency managers through the New York State Emergency Management Association (NYSEMA) and the Local Emergency Planning Committee (LEPC) meetings.

New partnerships that were created during FFY 2017:

- Fire Service Woman of New York State
- David Walsh, Chair of the Fire Science Program at Dutchess Community College
- Thomas Wutz, NYS Traffic Incident Management Committee
- Patrick Byrne, NYS DOH Office of Health Emergency Preparedness

Outreach and Interventions:

Committee members attend the local New York State Emergency Management Association (NYSEMA) and the Local Emergency Planning Committee (LEPC) meetings. Emergency exercises also provide an effective for committee members to engage with the local and State's fire and emergency response community. Some of the events that committee members presented or participated in:

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report

- Nine Mile Point Radiological Drill at NYSOEM EOC on 10/12/2016.
- Fire District Conference in Saratoga Springs to approximately 125 fire coordinators from across the state on October 14, 2016.
- WRECKIT 2016 Severe Weather Exercise on November 1 and 2, 2016 at the Chemung County EOC and Monroe County Pure Waters.
- Committee members also presented at the County Fire Coordinators meeting in Montour Falls on November 18, 2016 to approximately 100 fire coordinators from across the state.
- Gotham Shield Emergency Exercise at NYS OEM EOC on 4/26/2017.
- Livingston County Fire Chiefs on PESH resources and the Suggested Best Practices for Fire Department Training on 5/1/2017.
- Ulster County Association of Fire Districts on 5/18/2017.
- Niagara County Fire Chiefs on 9/14/2017 on the PESH Fire Strategic Planning Group and various PESH standards within the fire service.
- Finger Lakes and Western NY Sub Regions of the Western New York Health Emergency Preparedness Coalition on 9/18, 20/2017.

Inspections:

There were 91 inspections in the fire service NAICS in FFY 2017. The total inspections in Fire Service have declined by approximately 50% from the baseline year of 2012. The drop off in production can be attributed to the numbers and experience of available staff coupled with the increasing difficulty involved in enforcement inspections within the fire service.

Consultations:

There were a total of 31 consultations performed during FFY 2017, compared to 25 that were completed during the 2012 baseline year; this represents a 19% increase.

Outreach:

There were a total of 27 compliance assistance activities conducted during FFY 2017, compared to 55 that were performed during the 2012 baseline year; this represents a 50% decrease.

Training Seminars:

The 2016 WRECKIT Exercise created opportunities for PESH to continue outreach on the use of a HASP. During FFY 2017 committee members worked with the NYS DOH Emergency Preparedness Office on the development of a hospital specific HASP and Assessment sheet. The theme from the WRECKIT 2016 Exercise was used to develop resources to a severe winter storm response.

- Fire Safety Conference at SUNY Stony Brook University Campus Center on 10/12/2016
- Crossing Borders Emergency Preparedness Seminar on 11/1/2016
- WMD Workshop, presented by the FBI at Monroe County Fire Training Center on 4/19/2017
- NYS OFPC Technical Rescue Confined Space Class

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report

Compliance Assistance Resources:

The PESH Fire Strat Plan Resource CD is currently the most effective way for PESH staff to distribute compliance assistance resources to the fire community. New materials that have been developed for the CD include an updated Fire Department Organizational Statement, a PowerPoint Presentation of cleaning fire equipment and the Dangers of Overhaul Factsheet is promoted during presentations, consultations and inspections. An updated Hospital HASP and Severe Weather Assessment Sheet was developed for the NYS DOH Health Emergency Preparedness Coalition. As part of PESH preparedness and our assistance to the local and state emergency response community, fit testing is performed for DOSH Crisis Response Team members and an annual training that included a table top exercise was conducted for DOSH response team members.

Future Activities Planned:

The Fire Strat Plan Committee has appointed new leadership in this quarter; this will provide the opportunity for new talent and possibility a new direction for the group. Work with the DOH will continue into the 2018 FFY on additional assessment tools for common responses that hospital could encounter. The DOH will be assessing feedback obtained during the September presentations on topics for the future assessment tools.

Residential Nursing Care (NAICS 623110) and Acute Hospital Care (NAICS 622110)

Strategic Goal: Improve workplace safety and health for all public employees.

Performance Goal #1C: Reduce the number of Lost Workdays by 5% in NAICS 623110 and 622110.

Baseline Year: 2012

Activity Measures:

Partnerships –This committee continued building and maintaining partnerships with organized labor (PEF and CSEA), advocacy groups (NYS Zero Lift Task Force, NYCOSH, WNYCOSH) and various healthcare facilities. Safe patient handling assistance programs and other forms of assistance are being provided to public sector long term care and acute healthcare facilities.

Injury Data Collection and Analysis - The Log of Work Related Injuries and Illnesses (SH900) and the Summary of Work Related Injuries and Illnesses (SH-900.1) were used to assemble statistics relating to nursing home and acute hospital facilities covered by this committee.

The OSHA OIS system was used to assemble Consultation, Inspection and Compliance Assistance data

The Primary Outcome Measure of decreasing the Total Recordable Injury Rate in the targeted health care agencies by 1% per year has been exceeded as shown in the table below.

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report

Inspections –During FFY 2017 there were eighteen (18) inspections conducted in Nursing and Acute Hospital Care facilities.

Consultations – There were no Nursing Home or Acute Hospital Care consultations performed during this period.

Compliance Assistance Activities – There was one (1) Compliance Assistance Visits conducted in Nursing and Hospital Care settings in FFY 2017.

Training Seminars – Strategic plan committee members and the Department of Labor were involved in co-sponsoring the 9th Annual Safe Patient Handling Conference which will take place on November 15 & 16, 2017 at the Albany Capital Center. Committee members spent significant time planning and coordinating for the conference.

Primary Outcome Measures:

Number of Lost Workdays Due to Patient/Resident Handling

Nursing and Residential Care Facilities					
Measure	2012 Baseline	2013	2014	2015	2016
# Lost Work Days due to Resident Handling	13,375	9,749	10,530	9,842	7,127
Change	Baseline	27% Decrease	21% Decrease	26% Decrease	47% Decrease
General and Surgical Hospitals					
Measure	2012 Baseline	2013	2014	2015	2016
# Lost Work Days due to Resident Handling	12,868	11,583	10,139	9,603	9,079
Change	Baseline	10% Decrease	21% Decrease	25% Decrease	29% Decrease

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report

Days Away - Lost Work Day Rate – All Injuries and Illnesses

Nursing and Residential Care Facilities					
Measure	2012 Baseline	2013	2014	2015	2016
Lost Work Day Rate	9.0	8.6	8.2	8.3	6.1
Change	Baseline	4% Decrease	8.9% Decrease	7.8% Decrease	32.2% Decrease
General and Surgical Hospitals					
Measure	2012 Baseline	2013	2014	2015	2016
Lost Work Day Rate	4.0	2.9	3.5	3.1	3.9
Change	Baseline	28% Decrease	12.5% Decrease	22.5% Decrease	2.5% Decrease

*Lost Work Day Rate - # cases resulting in lost time X 200,000 / total # work hours
(Based on SH900.1)*

Intermediate Outcome Measures: Nursing Care Facilities and Hospitals

Measure Description	2012 Baseline	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	YTD
Inspection Visits *	6	2	4	4	7	18
Consultation Visits	0	0	0	0	0	0
Outreach & Technical Assistance Visits	4	1	0	0	0	1

** OIS Data*

Note: Quarters may not equal YTD due to late OIS entries

Healthcare FFY 2016 Activities

Introduction:

FFY 2017 is the second year of New York State Department of Labor's, FY 2016 – 2020 Five-Year Strategic Plan. This plan features some modifications to the previous plan's outcome and performance goals. The main goal of the Healthcare Strategic Plan committee is to reduce the Lost Work Day rate by 1% per year or 5% over the next 5 years. The PESH Healthcare Strategic Plan focuses on injury and illness reduction in County Nursing homes, State veterans' homes and public Acute Hospital Care facilities.

Partnership Activity:

Committee members continued their partnership with the NYS Zero Lift Task Force, WNYCOSH and NYS DOH. During FFY 2017, much of the committee's effort was focused on planning for the 2017 Safe Patient Handling Conference. This year, the 9th annual Safe Patient

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report

Handling Conference will be hosted at the Albany Capitol Center on November 15 & 16, 2017. Committee members along with other field and support staff assisted during all phases of the conference planning by working with attendee registrations, vendors, conference facility planners and arranging for attendee certifications, CEU's and staffing of the PESH conference booth.

Inspections:

During FFY 2017, there were eighteen (18) enforcement inspections in nursing homes and Acute Hospital Care facilities, compared to the FFY 2012 baseline year when 6 inspections were completed. This represents a 66% increase in the number of inspections. Of the eighteen inspections performed in FFY 2017, sixteen were completed at acute health care facilities and 2 were completed at nursing home facilities.

Consultations:

There were no consultations performed during this period which is consistent with the FFY 2012 baseline year.

Compliance Assistance:

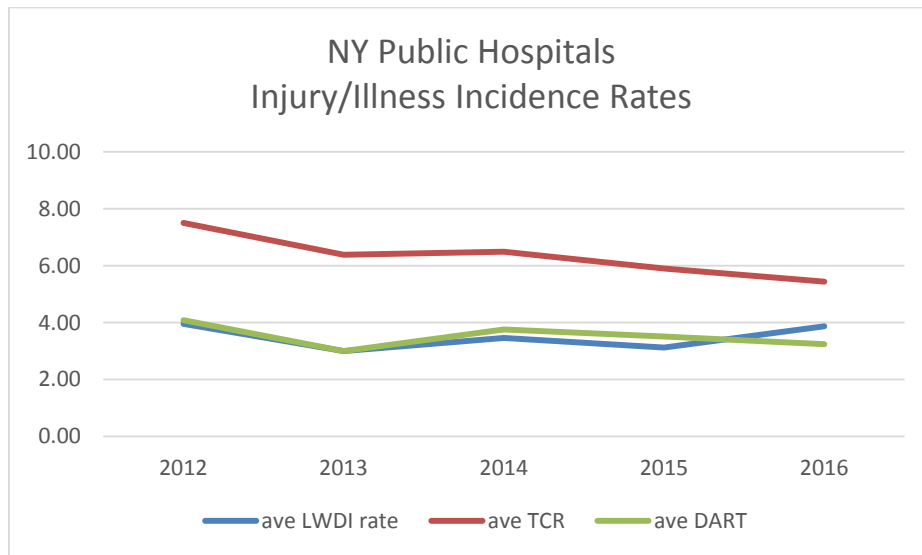
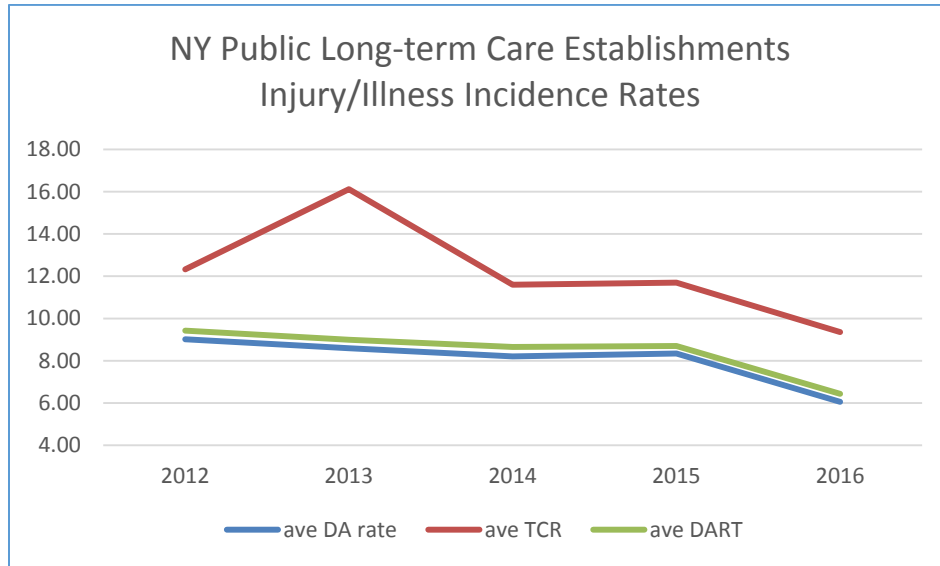
During FFY 2017 there was one (1) compliance assistance visit conducted which is consistent with the baseline year. Much of the efforts of committee members are not represented by a Compliance Assistance Report. Prior to the Safe Patient Handling Conference, Strat Plan members were assisting the Zero Lift Task Force Conference Planning Committee in event planning by working with presenters, vendors and the staff from Albany Conference Center. Each year committee members spear head the coordination of awarding CEU's to Nurses, Physical Therapists, Occupational Therapists and Nursing Home Administrators. Committee members assist with registrations, handouts and developing a conference agenda.

Injury Data Collection & Analysis:

Each year the committee spends considerable time compiling injury and illness trends within long term care and acute health care facilities. From the lost work day data obtained, the committee now has five years of lost work day data which has been used to categorize common injury types. Charts were created to help provide a comparison of the injury and illness data based on common injury types and the lost work days associated within each category. This data allows for an easy comparison of injury trends at specific facilities within these industries and also provides a more focused comparison between New York public health care and long term care facilities themselves. Below in this report are examples of the different charts used to illustrate the global trends from lost workdays for specific injury types.

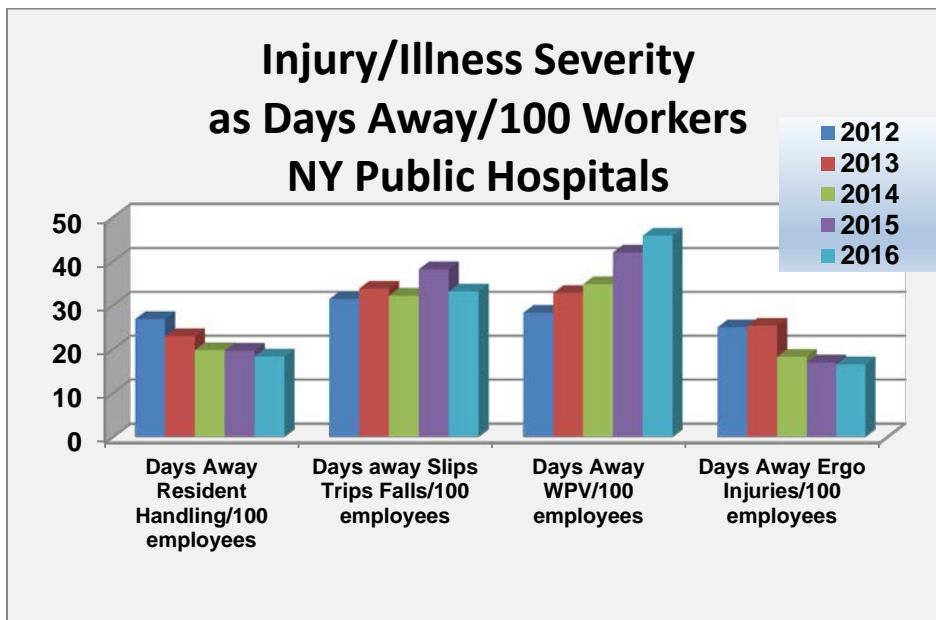
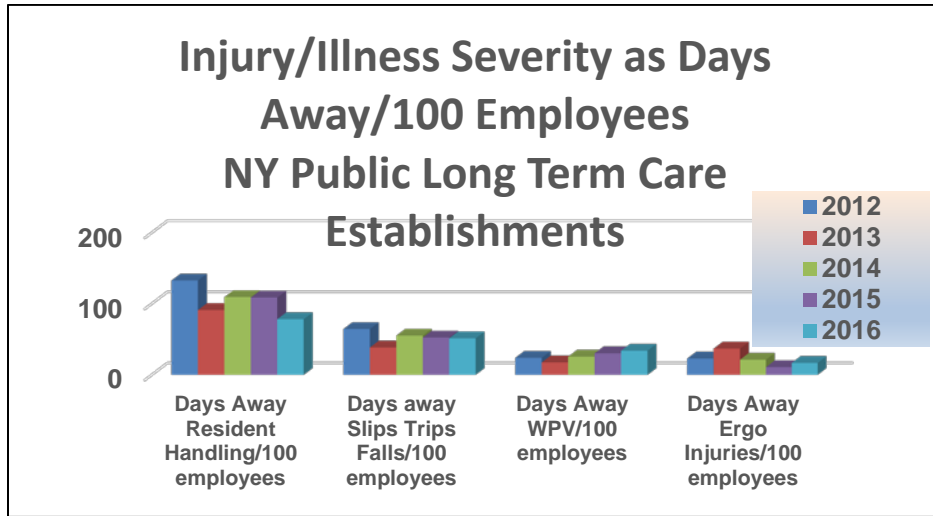
Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report



Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report



Miscellaneous Activities or Comments:

Each quarter committee members participate in quarterly conference calls where members report on their progress or provide updates on their individual activities. Strategic plan members continue to participate in Zero Lift Task Force conference calls to maintain contact with existing partners. Safe patient handling resources continue to be added to the PESH Health Care Resource CD. This year's updates included the New York Legislation on Safe Patient Handling Programs and additional resources to assist employers with the requirements of the Act. A seven-part video series on safe patient handling techniques has been added to the NYS DOL website.

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 PESH Comprehensive FAME Report

Training:

During FFY 2017, committee members have been working on a PowerPoint Presentation that will be used for outreach to help increase awareness among employers and unions alike. One of the committee's partners, WYNCOSH, forwarded a copy of a safe lifting PowerPoints to committee members where concepts are being used to help create a Strat Plan presentation that can be used in future outreach. The committee will assess the need for future outreach specifically on PESH recordkeeping requirements, additional training strategies will be discussed by the group.

Future Activities Planned:

The committee will continue to promote compliance with the Safe Patient Handling legislation through outreach, resource materials and inspections. Committee members will continue their involvement in the NYS Zero Lift Task Force and the NYS Safe Patient Handling Work Group. The committee will explore the concept of sharing the injury and illness data they have compiled on long term care facilities and acute public hospitals with the facilities themselves. The committee has compiled five years of injury data, categorized by common injuries for each facility. An employer's safe patient handling committee may find the Strat Plan's trending data useful when developing compliance strategies to the NYS Safe Patient Handling Act.