

**FY 2020**  
**Follow-up Federal Annual Monitoring Evaluation (FAME) Report**

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



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## **I. Executive Summary**

The primary purpose of this report is to assess the New York Public Employee Safety and Health (NY PESH) Bureau's progress in Fiscal Year (FY) 2020, and its ability to resolve findings identified in the previous FY 2019 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report.

On March 7, 2020, New York (NY) Governor Andrew Cuomo officially declared a state of emergency in NY due to the increasingly rapid spread of COVID-19. The state of emergency resulted in an interruption of vast operations throughout the state. By the end of March 2020, Governor Cuomo officially announced that 100% of non-essential personnel were required to remain home and that non-essential businesses statewide were closed until further notice.

During the COVID-19 pandemic in FY 2020, NY PESH received 229 COVID-related complaints which were either addressed or referred to the PAUSE NY Task Force that handled allegations of non-compliance with the governor's executive orders. NY PESH resources were extended further by investigations of the 322 reported potential COVID work-related deaths – the majority of these occurring in the New York City (NYC) metro area. During the performance period, PESH's response time to worker fatalities fell 72 percent which resulted in a substantial backlog. PESH has yet to make initial contact in hundreds of cases; therefore, this a new finding.

NY PESH has a history of engaging and collaborating collectively with OSHA. However, a new program director who started in FY 2020, faced an abundant number of challenges that a new director typically would not, including: COVID-19, lack of staffing, numerous Complaints About State Plan Administration (CASPs) and a Federal Program Change (FPC) that has been outstanding since 2015. Although PESH is responsive to OSHA's recommendations, the program needs to take more direct action to resolve outstanding issues in the future.

Last year's FAME report contained two findings and four observations. This year three new findings were identified (staffing issues, response time to worker fatalities, and late adoption of an FPC). No new observations were identified. In summary, this report contains a total of five findings and four observations.

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

## **II. State Plan Background**

The New York Department of Labor administers the New York State Plan. Roberta Reardon, 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 (SLG) workers in the state and its political subdivisions. In addition to the State Plan's enforcement responsibilities, NY PESH provides free on-site consultation and training services to SLG agencies, upon request.

NY 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 NY State Plan applies to all SLG 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. A new director for DOSH was hired in December of 2020, and a new program manager was hired in early 2021. NY 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 SLG employers found in violation of NY PESH standards. Per diem penalties can be assessed when failure-to-abate (FTA) notices are issued.

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

| <b>FY 2016-2020 PESH Funding History</b> |                           |                              |                                   |                           |  |
|--|---------------------------|------------------------------|-----------------------------------|---------------------------|--|
| <b>Fiscal Year</b>                       | <b>Federal Award (\$)</b> | <b>State Plan Match (\$)</b> | <b>100% State Plan Funds (\$)</b> | <b>Total Funding (\$)</b> | <b>Percentage of State Plan Contribution</b> |
| <b>2020</b>                              | \$3,966,700               | \$3,966,700                  | \$1,089,654                       | \$9,023,054               | 56%  |
| <b>2019</b>                              | \$3,778,200               | \$3,778,200                  | \$1,466,654                       | \$9,023,054               | 59%  |
| <b>2018</b>                              | \$3,705,200               | \$3,705,200                  | \$2,096,253                       | \$9,506,653               | 61%  |
| <b>2017</b>                              | \$3,705,200               | \$3,705,200                  | \$1,209,200                       | \$8,619,600               | 57%  |
| <b>2016</b>                              | \$3,705,200               | \$3,705,200                  | \$1,226,400                       | \$8,636,800               | 57%  |

In the FY 2020 grant application, NY PESH allocated for 46 enforcement staff and had 30 onboard; 13 safety and health consultants were allocated and seven were onboard. The program also has three whistleblower investigators onboard. NY PESH does not meet staffing expectations (29 safety/21 health); however, as a SLG-only State Plan, NY PESH is not subject to required benchmark levels.

## **New Issues**

### Lapsing of Federal Funds

On August 8, 2019, OSHA implemented a new policy for permanently redistributing 23(g) funds from State Plans that repeatedly lapse or deobligate. Under this policy, State Plans who lapse or deobligate funds in three consecutive years will have a portion of their base awards permanently reduced in Year Four. NY PESH lapsed a total of \$5,842.35 from its FY 2020 federal grant award. This is the first year that PESH has lapsed funds. OSHA sent a formal warning letter to program administration reiterating the lapse and reminding them that lapsing of funds three consecutive years in a row will lead to a permanent reduction in their award amount

### III. Assessment of State Plan Progress and Performance

#### A. Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the follow-up year, and as such, OSHA did not perform an on-site case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

- State Activity Mandated Measures Report (Appendix D)
- State Information Report
- Mandated Activities Report for Consultation
- State OSHA Annual Report (Appendix E)
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and NY PESH

#### B. Findings and Observations

This report contains five findings (three new and two continued) and four continued observations. Appendix A describes the continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2019 recommendation in detail.

##### Completed Findings

There were no completed findings identified in FY 2020.

##### Continued Findings

##### **Finding FY 2020-01 (FY 2019-01 / 2018-01 / FY 2017-01): OIS Data/Information**

In FY 2019, five 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 all five (100%) case files reviewed.
- Sampling data collected was not entered into OIS in all five (100%) case files reviewed.

**Status:** On August 31, 2020, sampling documentation was reinforced with the Industrial Hygiene (IH) staff. The Supervisory Associate IH will ensure that the updated PESH 915 Case Review Sheet is utilized to document IH calibration and OIS sampling data entry. Completed internal case file audit forms will be reviewed by Program Manager 1 on an on-going basis to ensure adherence of proper documentation and procedures. The corrective action has been completed, but an on-site case file review is necessary to evaluate the status of this finding. It will be a focus of next year's comprehensive on-site case file review and remains open, awaiting verification.

**Finding FY 2020-02 (FY 2019-02): Notification Delay to Complainants and/or Worker Representatives**

In FY 2019, 11 of the 21 (52%) complaint files reviewed did not contain documentation that the complainant and/or employee representative was informed of a delay in issuing the Notice of Violation (NOV).

**Status:** On August 31, 2020, during district office staff meetings, the requirements as stated in Chapter IX A.9.c were reinforced to staff. The case file reviewers will utilize the updated PESH 915 Case Review Sheet to document timely notification to the complainant. The corrective action has been completed, but an on-site case file review is necessary to evaluate the status of this finding. It will be a focus of next year's comprehensive on-site case file review and remains open, awaiting verification.

**New FY 2020 Findings**

**Finding FY 2020-03: Staffing**

PESH staffing level is allocated for 43 CSHOs, but currently there are only 29 onboard.

PESH continues to struggle to fill staff vacancies. Staffing vacancies affect the State Plan's ability to timely address complaints/referrals/fatalities, as well as achieving their targeting and programmed inspection goals established in their FY 2020 grant. Over the last three years, PESH has seen a reduction in the number of compliance safety and health officers (CSHOs) allocated versus onboard. Information provided for the FY 2021 grant shows that as of July 1, 2020 there were 14 vacancies – five from the NYC office. These staffing vacancies affect the State Plan's ability to timely address complaints/referrals/fatalities, as well as achieve its targeting and programmed inspection goals established in the grant application. The State Plan has been under a hiring freeze for years and is currently working with NYDOL's deputy commissioner to prioritize hiring based on the need and availability.

**Recommendation 20-03:**

PESH should fill current staffing vacancies with qualified staff, specifically in the NYC office.

**Finding FY 2020-04: Response Time to Work-Related Fatalities**

One workday response time to fatalities (SAMM #10) in FY 2020 was 28% substantially below the FRL of 100%.

PESH received 322 potential workplace-related COVID-19 fatalities during FY 2020 compared to 11 in FY 2019. PESH failed to make initial contact in response to hundreds of fatalities reported – stemming primarily from emergency responders, Metropolitan Transit Authority (MTA), and hospital workers. During this evaluation, OSHA considered the challenges of COVID-19, but unlike FY 2019 when PESH's response time to worker fatalities was 100%, the response time for FY 2020 fell significantly to 28%. One reason is insufficient staffing as noted previously. PESH also has not addressed how they will specifically address eliminating the substantial backlog by making initial contact. OSHA is monitoring this issue closely and saw some improvement at the beginning of FY 2021; however, PESH needs to sufficiently resolve this issue before the comprehensive FAME.

**Recommendation 20-04:**

PESH should respond to worker fatalities within one workday which is the SAMM reference agreed upon measure and federal OSHA requirement. PESH needs to properly address the worker fatality response backlog that accumulated during the performance.

**Finding FY 2020-05: Federal Standard Changes**

PESH has not adopted the FY 2015 Federal Standard Number 1904 – Occupational Injury and Illness Recording and Reporting Requirement as it is a requirement for all State Plans.

PESH anticipated adopting the 1904.39-reporting standard in January 2016, but approval from the NY Counsels Office is needed to publish in the NY Register. It is OSHA’s understanding that SLG employers are following the requirements and reporting worker fatalities within eight hours, as well as hospitalizations, amputations, and loss of an eye; however, NY PESH cannot post publicly until official approval is received from the NY Counsels Office.

**Recommendation 20-05:**

PESH should take action to adopt the FY 2015 Federal Standard Number 1904 – Occupational Injury and Illness Recording and Reporting Requirement by obtaining approval from the NY Counsels Office to allow publication in the NY Register by September 30, 2021.

**Closed Observations**

There were no closed observations identified in FY 2020.

**Continued Observations**

**Observation FY 2020-01 (FY 2019-OB-01 / FY 2018-OB-08): Safety Lapse Time**

In FY 2020, the average safety lapse time (SAMM 11) for citations was calculated at 117.79 days compared to 89.61 days in FY 2019. The FY 2020 average is above the FRL range of 40.46 to 60.70 days.

**Status:**

In FY 2021, OSHA will continue to monitor this issue utilizing quarterly SAMM reports.

**Observation FY 2020-02 (FY 2019-OB-02 / FY 2018-OB-09): Health Lapse Time**

In FY 2020, the average health lapse time (SAMM11) for citations was calculated at 112.90 days compared to 89.90 days in FY 2019. The FY 2020 average is above the FRL range of which is above the FRL range of 48.31 to 72.47 days.

**Status:**

In FY 2021, OSHA will continue to monitor this issue utilizing quarterly SAMM reports.

**Observation FY 2020-03 (FY 2019-OB-03): Case File Documentation and Organization**

Worker retaliation case files reviewed in FY 2019, did not accurately reflect the appropriate case determination, document the correct closure date, accurately record the complaint filing date, or document that supervisory review was conducted prior to the issuance of determination letters. In

all 15 (100%) of the cases reviewed, supervisory review was documented before the case file was filed away and due process rights of the parties were not affected.

- In three of the 15 (20%) case files reviewed, determination letters contained the wrong determination noted (this was noted). This was not due to a data entry error, but instead to a misunderstanding of the terminology. It did not impact the complainant's right of appeal or either parties' due process rights.
- In three of the five (20%) administratively closed cases, closure dates (noted in IMIS) predated the issuance date of the determination letter, inferring supervisory review of the investigation had not yet been completed. In all case types, both docketed investigations and administrative closures, the determination date should match the date the determination letter was issued by the program manager.
- Three of 15 (20%) case files did not accurately record the complaint filing date. This did not impact PESH's ability to investigate the claim. However, an inaccurate filing date could negatively affect both the complainant's and respondent's due process rights if the complaint was later determined to have been filed outside of the statute of limitations (30 days) or resulted in litigation.
- One of 15 (7%) case files did not contain witness interview notes or memos to file recounting the relevant information. It is unclear how many case files did not contain internal correspondence.

**Status:**

In FY 2021, 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.

**Observation FY 20-04 (FY 2019-OB-04 / FY 2019-OB-03 / FY 2018-OB-07): Consultation Policy and Procedures Manual (CPPM)**

Written policies and procedures for NY 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 NY PESH's (September 20, 2005) Consultation Policy and Procedures Manual (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 NY 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.)



- There is no evaluative process for granting of abatement extensions, nor is there a requirement for providing an updated list of hazards after a granted extension. (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.
- NY 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 were missing a SHMS evaluation.

**Status:** NY PESH is currently in the process of updating its CPPM. A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year's comprehensive on-site case file review and is continued.

#### New FY 2020 Observations

There were no new observations identified in FY 2020.

### **C. State Activity Mandated Measures (SAMM) Highlights**

Each SAMM 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 NY PESH's FY 2020 SAMM Report and includes the FRLs for each measure. NY PESH was outside the FRL on the following SAMMs:

**SAMM 1a – Average number of workdays to initiate complaint inspections (state formula):**  
Discussion of State Plan data and FRL: NY PESH's average number of workdays to initiate complaint inspections was 6.58 days for FY 2020 which is below the negotiated FRL number of 10 days.

Explanation: PESH continues to be below the FRL.

**SAMM 5 – Average number of violations per inspection with violations by violation type:**  
Discussion of State Plan data and FRL: The FRL for the average number of violations per inspection with violations by violation type is +/- 20% of the three-year national average of 1.79 for serious/willful/repeat (S/W/R) violations which equals a range of 1.43 to 2.15. NY PESH's S/W/R average is 4.01 violations which is above the FRL range. The FRL for other-than-serious (OTS) violations is +/- 20% of the three-year national average of 0.95 which equals a range of 0.76 to 1.14. NY PESH's OTS average is 1.26 which is also above the FRL range.

Explanation: PESH's violations per inspection continue to be above average.

**SAMM 7 – Planned v. actual inspections – safety/health:**

Discussion of State Plan data and FRL: NY PESH conducted 997 inspections during FY 2020, which is 34% below the projected goal of 1,500 inspections. The FRL for planned v. actual inspections is +/- 5% of the negotiated number of 1,000 safety inspections which equals a range of 950 to 1,050 inspections. NY PESH's safety staff conducted 600 inspections substantially lower than the FRL. The health staff conducted 390 inspections also below the FRL range of 475 to 525 inspections.

Explanation: PESH's low number of inspections can be attributed to the state of emergency declared by Governor Cuomo on March 7, 2020. Some establishments were closed and/or open with limited operations; therefore, PESH developed and implemented alternate inspection methods (virtual inspections) throughout the remainder of FY 2020. PESH received over 200 COVID-19-related complaints which were either addressed, or referred to the PAUSE NY Task Force that handled allegations of non-compliance with the governor's executive orders. Due to the circumstances, this result does not rise to the level of an observation but OSHA will monitor during quarterly meetings in FY 2021.

## Appendix A – New and Continued Findings and Recommendations

### FY 2020 NY PESH Follow-up FAME Report

| FY 2020-#  | Finding   | Recommendation   | FY 20XX-#                              |
|------------|---|--|--|
| FY 2020-01 | <p><i>OSHA Information System (OIS) Data/Information</i><br/>In FY 2019, five 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"> <li>• Pre-and post-calibration information was missing in all five (100%) case files reviewed.</li> <li>• Sampling data collected was not entered into OIS in all five (100%) case files reviewed.</li> </ul> | PESH enforcement should ensure that when sampling is performed, complete data is entered in the OIS system on the appropriate form.  | FY 2019-01<br>FY 2018-01<br>FY 2017-01 |
| FY 2020-02 | <p><i>Notification Delay to Complainants and/or Worker Representatives</i><br/>In FY 2019, 11 of the 21 (52%) complaint files reviewed did not contain documentation that the complainant and/or employee representative was informed of a delay in issuing the Notice of Violation (NOV).</p>  | PESH should ensure that the complainant and/or employee representative are informed of any delay in issuing the NOV as stated in their Field Operations Manual (FOM) Chapter IX A.9.c - "A delay of more than 30 days following the inspection would warrant such notification." | FY 2019-02                             |
| FY 2020-03 | <p><i>Staffing</i><br/>PESH staffing level is allocated for 43 CSHOs, but currently there are only 29 onboard.</p>  | PESH should fill current staffing vacancies with qualified staff, specifically in the NYC office.  |  |
| FY 2020-04 | <p><i>Response Time to Work-Related Fatalities</i><br/>One workday response time to fatalities in FY 2020 was 28% substantially below the FRL of 100%.</p>  | PESH should respond to worker fatalities within one workday which is the SAMM reference agreed upon measure and federal OSHA requirement. PESH needs to properly address the worker fatality response backlog that accumulated during the performance.                           |  |
| FY 2020-05 | <p><i>Federal Program Changes (FPCs)</i><br/>PESH has not adopted the FY 2015 Federal Standard Number 1904 – Occupational Injury and Illness Recording and Reporting Requirement as it is a requirement for all State Plans.</p>  | PESH should take action to adopt the FY 2015 Federal Standard Number 1904 – Occupational Injury and Illness Recording and Reporting Requirement by obtaining approval from the NY Counsels Office to allow publication in the NY Register by September 30, 2021.                 |  |

## Appendix B – Observations and Federal Monitoring Plans

### FY 2020 NY PESH Follow-up FAME Report

| Observation #<br>FY 2020-OB-# | Observation#<br>FY 20XX-OB-#   | Observation  | Federal Monitoring Plan  | Current Status |
|-------------------------------|--------------------------------|--|--|----------------|
| FY 2020-OB-01                 | FY 2019-OB-01<br>FY 2018-OB-08 | <p><i>Safety Lapse Time</i><br/>In FY 2020, the average safety lapse time for citations was calculated at 117.79 days which is above the FRL range of 40.46 to 60.70 days.</p>   | In FY 2021, OSHA will continue to monitor this issue utilizing quarterly SAMM reports.   | Continued      |
| FY 2020-OB-02                 | FY 2019-OB-02<br>FY 2018-OB-09 | <p><i>Health Lapse Time</i><br/>In FY 2020, the average health lapse time for citations was calculated at 112.90 days which is above the FRL range of which is above the FRL range of 48.31 to 72.47 days.</p>   | In FY 2021, OSHA will continue to monitor this issue utilizing quarterly SAMM reports.   | Continued      |
| FY 2020-OB-03                 | FY 2019-OB-03                  | <p><i>Worker Retaliation Case File Documentation and Organization</i><br/>In FY 2019, worker retaliation case files did not accurately reflect the appropriate case determination, document the correct closure date, accurately record the complaint filing date, or document that supervisory review was conducted prior to the issuance of determination letters. In all 15 (100%) cases reviewed, supervisory review was documented at some point before the case file was filed away and due process rights of the parties were not affected.</p> <ul style="list-style-type: none"> <li>• In three of the 15 (20%) case files reviewed, determination letters had the wrong determination noted. The incorrect determination was also noted in IMIS.</li> <li>• In three of the five (20%) administratively closed cases, closure dates (noted in IMIS) predated the issuance date of the determination letter, inferring supervisory review of the investigation had not yet been completed.</li> <li>• Three of 15 (20%) case files did not accurately record the complaint filing date.</li> <li>• One of 15 (7%) case files did not contain witness interview notes or memos to file recounting the relevant information.</li> </ul> | In FY 2021, 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      |

## Appendix B – Observations and Federal Monitoring Plans

### FY 2020 NY PESH Follow-up FAME Report

| Observation #<br>FY 2020-OB-# | Observation#<br>FY 20XX-OB-#                    | Observation   | Federal Monitoring Plan  | Current Status |
|-------------------------------|---|---|--|----------------|
| FY 2020-OB-04                 | FY 2019-OB-04<br>FY 2018-OB-07<br>FY 2017-OB-07 | <p><i>Consultation Policy and Procedures Manual (CPPM)</i><br/>Written policies and procedures for NY 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 where NY 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"> <li>• 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).</li> <li>• 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.)</li> <li>• In both NY PESH’s CPPM and the report to the employer, there is no requirement to post the 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.)</li> <li>• There is no evaluative process for granting of abatement extensions, nor is there a requirement for providing an updated list of hazards after an extension is granted. (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).</li> </ul> | In FY 2021, OSHA will continue to work with PESH to update its CPPM to reflect the policies and procedures in OSHA’s CSP 02-00-003. A limited number of case files will be selected randomly and reviewed to determine if this item was addressed. | Continued      |

## Appendix B – Observations and Federal Monitoring Plans

### FY 2020 NY PESH Follow-up FAME Report

| Observation #<br>FY 2020-OB-# | Observation#<br>FY 20XX-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"> <li>• 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.</li> <li>• NY 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 were missing a SHMS evaluation.</li> </ul> |                         |                |

## Appendix C - Status of FY 2019 Findings and Recommendations

### FY 2020 NY PESH Follow-up FAME Report

| FY 2019-#  | Finding  | Recommendation  | State Plan Corrective Action  | Completion Date | Current Status        |
|------------|--|---|---|-----------------|-----------------------|
| FY 2019-01 | <p><i>OSHA Information System (OIS) Data/Information</i><br/>Five enforcement health case files (where sampling was performed) showed that data/information was incomplete and/or not entered into OIS.</p>  | <p>PESH enforcement should ensure that when sampling is performed, complete data is entered in the OIS system on the appropriate form.</p>  | <p>Sampling documentation was reinforced with the Industrial Hygiene (IH) staff. The Supervisory Associate IH will ensure that the updated PESH 915 Case Review Sheet is utilized to document IH calibration and OIS sampling data entry. Completed internal case file audit forms will be reviewed by Program Manager 1 on an on-going basis to ensure adherence of proper documentation and procedures.</p> | August 31, 2020 | Awaiting Verification |
| FY 2019-02 | <p><i>Notification Delay to Complainants and/or Worker Representatives</i><br/>Of the 21 complaint case files reviewed, 11 (52%) did not contain documentation that the complainant and/or worker representative was informed of a delay in issuing the Notice of Violation (NOV).</p> | <p>PESH should ensure that the complainant and/or worker representative are informed of any delay in issuing the NOV as stated in their Field Operations Manual (FOM) Chapter IX A.9.c - "A delay of more than 30 days following the inspection would warrant such notification."</p> | <p>During district office staff meetings, the requirements as stated in Chapter IX A.9.c were reinforced to staff. The case file reviewers will utilize the updated PESH 915 Case Review Sheet to document timely notification to the complainant.</p>  | August 31, 2020 | Awaiting Verification |

## Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report

### FY 2020 PESH Follow-up FAME Report

| <b>U.S. Department of Labor</b>   |   |                 |                        |  |
|---|---|-----------------|------------------------|--|
| Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs) |   |                 |                        |  |
| State Plan: New York - PESH   |   |                 | FY 2020                |  |
| SAMM Number   | SAMM Name   | State Plan Data | Further Review Level   | Notes  |
| <b>1a</b>   | Average number of work days to initiate complaint inspections (state formula)         | 6.58            | 10                     | The further review level is negotiated by OSHA and the State Plan.   |
| <b>1b</b>   | Average number of work days to initiate complaint inspections (federal formula)       | 5.99            | N/A                    | This measure is for informational purposes only and is not a mandated measure.   |
| <b>2a</b>   | Average number of work days to initiate complaint investigations (state formula)      | 2.48            | 1                      | The further review level is negotiated by OSHA and the State Plan.   |
| <b>2b</b>   | Average number of work days to initiate complaint investigations (federal formula)    | 0.57            | N/A                    | This measure is for informational purposes only and is not a mandated measure.   |
| <b>3</b>  | Percent of complaints and referrals responded to within one workday (imminent danger) | 100%            | 100%                   | The further review level is fixed for all State Plans.   |
| <b>4</b>  | Number of denials where entry not obtained  | 0               | 0                      | The further review level is fixed for all State Plans.   |
| <b>5</b>  | Average number of violations per inspection with violations by violation type         | SWRU: 4.01      | +/- 20% of SWRU: 1.79  | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.43 to 2.15 for SWRU and from 0.76 to 1.14 for OTS. |
|   |   | Other: 1.26     | +/- 20% of Other: 0.95 |  |
| <b>6</b>  | 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 2020 State Activity Mandated Measures (SAMM) Report

### FY 2020 PESH Follow-up FAME Report

| <b>U.S. Department of Labor</b> |   |                        |                             |  |
|---------------------------------|---|------------------------|-----------------------------|--|
| <b>SAMM Number</b>              | <b>SAMM Name</b>  | <b>State Plan Data</b> | <b>Further Review Level</b> | <b>Notes</b>   |
| <b>7</b>                        | Planned v. actual inspections – safety/health   | S: 607                 | +/- 5% of S: 1,000          | 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 950 to 1,050 for safety and from 475 to 525 for health. |
|                                 |   | H: 390                 | +/- 5% of H: 500            |  |
| <b>8</b>                        | Average current serious penalty in private sector - total (1 to greater than 250 workers) | N/A                    | +/- 25% of \$2,964.86       | N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.   |
|                                 | <b>a.</b> Average current serious penalty in private sector (1-25 workers)                | N/A                    | +/- 25% of \$1,967.64       | N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.   |
|                                 | <b>b.</b> Average current serious penalty in private sector (26-100 workers)              | N/A                    | +/- 25% of \$3,513.45       | N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.   |
|                                 | <b>c.</b> Average current serious penalty in private sector (101-250 workers)             | N/A                    | +/- 25% of \$5,027.02       | N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.   |
|                                 | <b>d.</b> Average current serious penalty in private sector (greater than 250 workers)    | N/A                    | +/- 25% of \$6,190.91       | N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.   |

## Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report

### FY 2020 PESH Follow-up FAME Report

| <b>U.S. Department of Labor</b> |   |                        |                             |  |
|---------------------------------|---|------------------------|-----------------------------|--|
| <b>SAMM Number</b>              | <b>SAMM Name</b>  | <b>State Plan Data</b> | <b>Further Review Level</b> | <b>Notes</b>   |
| <b>9</b>                        | Percent in compliance   | S: 32.85%              | +/- 20% of S: 31.03%        | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 24.82% to 37.24% for safety and from 29.72% to 44.58% for health.                        |
|                                 |   | H: 53.42%              | +/- 20% of H: 37.15%        |  |
| <b>10</b>                       | Percent of work-related fatalities responded to in one workday                            | 28%                    | 100%                        | The further review level is fixed for all State Plans.   |
| <b>11</b>                       | Average lapse time  | S: 117.79              | +/- 20% of S: 50.58         | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 40.46 to 60.70 for safety and from 48.31 to 72.47 for health.                            |
|                                 |   | H: 112.90              | +/- 20% of H: 60.39         |  |
| <b>12</b>                       | Percent penalty retained  | N/A                    | +/- 15% of 67.51%           | N/A – The State Plan did not impose any monetary penalties in FY 2020. The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 57.38% to 77.64%. |
| <b>13</b>                       | Percent of initial inspections with worker walk around representation or worker interview | 95.89%                 | 100%                        | The further review level is fixed for all State Plans.   |
| <b>14</b>                       | Percent of 11(c) investigations completed within 90 days                                  | 0%                     | 100%                        | The further review level is fixed for all State Plans.   |
| <b>SAMM Number</b>              | <b>SAMM Name</b>  | <b>State Plan Data</b> | <b>Further Review Level</b> | <b>Notes</b>   |

## Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report

### FY 2020 PESH Follow-up FAME Report

| <b>U.S. Department of Labor</b> |  |     |                  |   |
|---------------------------------|--|-----|------------------|---|
| <b>15</b>                       | Percent of 11(c) complaints that are meritorious                   | 17% | +/- 20% of 18%   | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 14.40% to 21.60%. |
| <b>16</b>                       | Average number of calendar days to complete an 11(c) investigation | 594 | 90               | The further review level is fixed for all State Plans.  |
| <b>17</b>                       | Percent of enforcement presence                                    | N/A | +/- 25% of 1.09% | N/A – This is a State and Local Government State Plan and is not held to this SAMM. The further review level is based on a three-year national average. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 9, 2020, as part of OSHA’s official end-of-year data run.



**Department  
of Labor**

# **PESH Federal Fiscal Year 2020 State OSHA Annual Report (SOAR)**

## **Annual Performance Plan Activities FFY 2020**

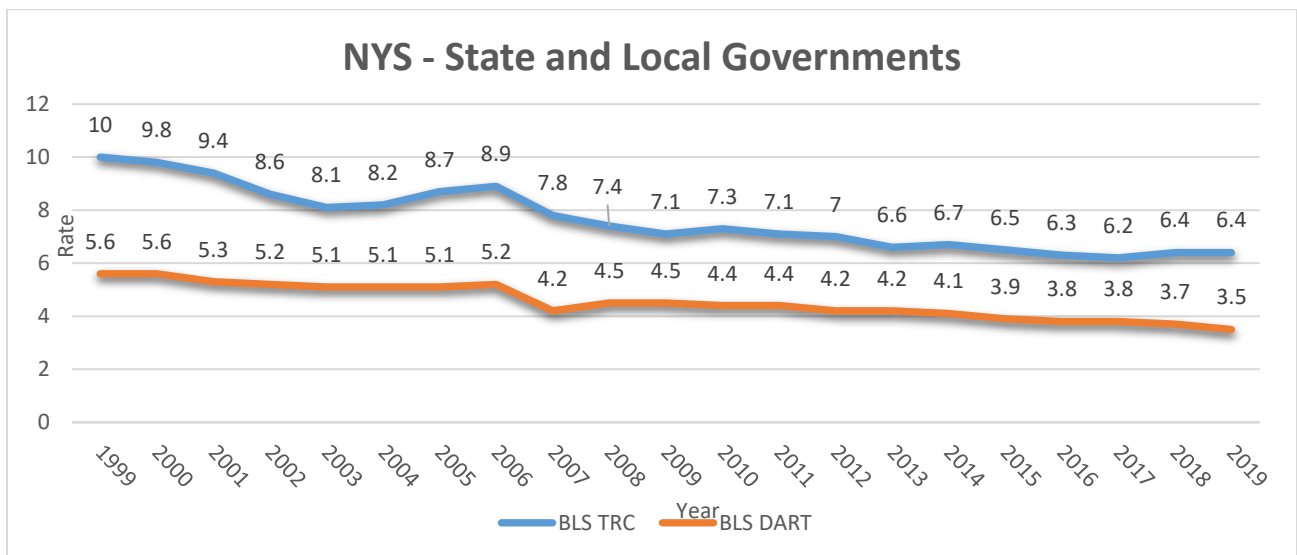
The Division of Safety and Health (DOSHS) is one of five units within Worker Protection in the New York State Department of Labor. The Division of Safety and Health administers ten programs to protect the public and working men and women of New York from hazards, accidents and injuries; one of which is the Public Employee Safety and Health (PESH) Bureau.

The PESH Bureau 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, City, Town, Village governments, Public Authorities, School Districts and Paid and Volunteer Fire Departments. The PESH Bureau provides protection through two main functions - enforcement and consultation services.

The PESH Bureau instituted a Strategic Plan in 1998. The PESH Strategic Plan focuses on select industries which have high injury and illness or Days Away, Restricted or Transfer (DART) rates. The current 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 and illnesses 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 and illnesses.

The PESH Bureau 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 Bureau and the Strategic Plan committees are identified in this report. The following are noteworthy statistical highlights and trends.

Based on data from the NYS Department of Labor Office of Research and Statistics, the Total Recordable Injury and Illness Incident Rate (TRC) for Calendar Year (CY) 2019 for state and local government employment was 6.4 per 100 full-time equivalent workers. The DART rate for CY 2019 was 3.5 - a 5.4% decrease from CY 2018 which was 3.7. Both the Total Recordable Case and the DART Rates have experienced a consistent downward trend of declining rates since the inception of the Strategic Plans in 1998, when the TRC and DART were 10.5 and 6.0 respectively. Overall the TRC Rate has decreased 39 % and the DART Rate has decreased 41.7% over this period.



TRCR – Total Recordable Case (Injury and Illness) Rate  
 DART – Days Away, Restricted, or job Transfer Rate  
 \*Based on BLS data

Much of the FFY 2020 inspection and consultation statistics must be framed in the context of New York State, primarily the New York City metro area, as the global epicenter of COVID infections and deaths from March through May 2020.

During Federal Fiscal Year (FFY) 2020, twenty-nine (29) different PESH Compliance Safety and Health Officers (CSHO's) conducted 991 inspections, as compared to FFY 2019, when 1,567 inspections were conducted by thirty-four (34) CSHO's. Three additional CSHO's were hired in FFY 2020, and are expected to be ready for field inspections in FFY 2021. Fourteen (14) safety staff conducted 601 inspections, compared to 924 inspections in FFY 2019 conducted by eighteen (18) safety staff. Fifteen (15) industrial hygiene staff conducted 390 inspections, compared to 643 inspections in FFY 2019 conducted by sixteen (16) industrial hygiene staff.

There were a total of 2,387 enforcement violations issued in FFY 2020 compared to the 3,183 violations issued in FFY 2019. The number of violations per inspection was 2.4 in FY 2020, compared to 2.0 in FY 2019.

During the COVID-19 pandemic in FFY 2020, PESH received 229 COVID-related complaints, which were either addressed, or referred to the PAUSE NY Task Force that handled allegations of non-compliance with the Governor's Executive Orders. PESH resources were further stressed by investigations of the 322 reported COVID work-related deaths.

Of the total number of violations issued during FY 2020, twenty-one (21) were Failure to Abate (FTA), zero (0) willful violations, eleven (11) were repeat violations, 569 were non-serious and 1,795 were serious violations. There were 212,044 employees covered by the inspections performed in FFY 2020.

PESH investigated 264 complaints in FFY 2019, compared to 375 complaints in FFY 2019. The number of inspections have declined, due in large part to reduced staffing, as the Federal Grant has not kept pace with increased costs. This factor along with the increase in complaints each year has resulted in the percentage of complaint inspections of the total yearly inspections to increase from 17% in FFY 2017 (1,761 inspections), 22% in FFY 2018, 24% in FFY 2019, and 27% in FFY 2020.

PESH had one hundred sixty-seven (167) Fatality and/or catastrophe (FATCAT) investigations in FFY 2020 compared to eleven (11) investigations in FFY 2019 – a 1,418 % increase.

PESH investigated twenty-two (22) discrimination cases in FFY 2020, compared to twenty-four (24) discrimination cases in FFY 2019. Thirteen (13) of these cases were dismissed / non-merit, two (2) cases were settled, and three (3) cases were determined to be merit. Four (4) cases are pending.

During FFY 2020, PESH conducted 146 consultations compared to the 237 consultations in FFY 2019, a 38% decrease. The decrease was due to retirements and transfers, and restrictions on onsite visits due to the COVID-19 pandemic. By the end of FFY 2020 there were six (6) consultants, down from full staffing of ten (10) consultants.

PESH tracks Compliance Assistance activities for both enforcement and consultation. During FFY 2020, there were 188 Compliance Assistance activities conducted by six (6) PESH consultants and fourteen (14) compliance assistance visits performed by PESH enforcement staff. The total compliance assistance activities for FFY 2020 were 202 compared to 201 visits made in FFY 2019. The OIS system captures data regarding the total number of employees and employers affected for by Compliance Assistance activities. For Enforcement Compliance Assistance activities, the number of employers reached was fourteen (14), with the number of employees affected 63,395. For Consultation Compliance Assistance activities, the number of employers reached was 188, with the number of employees affected 532,089.

There were no new contested cases in FFY 2020 and in FFY 2019. In FFY 2018, there were six (6) contested cases.

Total PESH penalties billed during FFY 2020 were \$147,652. Penalty collection for the year totaled \$4,450.

## **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. PESH requested and obtained a one year extension on the FFY 2016 5-year plan due to the workload and difficulties caused by the COVID-19 pandemic. The Strategic Plan Performance Goals for the 5-year plan beginning in FFY 2016 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:** 2020

#### **Activity Measures:**

**Partnerships** – During the beginning of FFY 2020, our group deliberated changing our focus to a different area (NAICS 2213). However, after careful consideration and occupational injury data review, we committed to resume our focus on police protection. The continued focus will serve to refresh and strengthen our existing relationships with organizations covering a range of levels and facets of law enforcement. One of our oldest relationships is the NYS Sheriff's Association, which includes all of the county level sheriff's departments. Later we made progress with the NYS Division of Criminal Justice Services, which provides a variety of training, accreditation, technical and data services to law enforcement, and continues to likely be the most efficient and effective means of disseminating information to the myriad of departments throughout the state. Next, we began working with the NYS Association of Chiefs of Police,



which is an effective means of connecting to the vast network of city, town and village police departments which often lack access to the safety and health resources of larger departments. The newest partnership which we intend to further develop is with the NYSDOT's Traffic Incident Management Symposium, which holds events every two years bringing together the various entities involved in traffic incident management: police, transportation, fire, EMS, and towing & recovery.

**Injury Data Collection and Analysis** – Our committee intended to use USDOL and NYSDOL BLS data to track Total Recordable Case (TRC) and DART rates for local government police agencies. This strategy was selected due to lower staffing levels and to increase the amount of time members could devote to plan activities other than requesting and obtaining data for each entity. However, we discovered that such data for our NAICS has been unavailable since 2017. Therefore, the 2020 baseline will be established by our members obtaining the injury and illness logs (SH-900) and summaries (SH-900.1) from each county sheriff's department and NYPD. After review and analysis, the data will also be used to identify trends and patterns were the committee can focus their efforts on developing fact sheets or other law enforcement specific resources. Through OSHSPA membership and interaction with OSHA state plan representatives, the possibility exists that the BLS data issue may be improved in the future.

The Primary Outcome Measure of decreasing the Total Recordable Injury Rate in police protection agencies by 1% per year will be assessed in subsequent years after establishing the 2020 data baseline.

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

**Inspections** – There were 65 Enforcement Inspections conducted in FFY 2020.

**Consultations** – There were four (4) Consultation visits in FFY 2020.

**Outreach**– There were a total of seven (7) Compliance Assistance Visits completed during FFY 2020.

**Primary Outcome Measures:**

**Police Service Injury and DART Rates**

| Year                           | Baseline (2012) | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | % Reduction from Baseline Year |
|--------------------------------|-----------------|------|------|------|------|------|------|------|--------------------------------|
| <b>Injury and Illness Rate</b> | <b>16.9</b>     | 15.2 | 15.2 | 14.9 | 12.6 | NA** | NA** | NA** | - 25.4                         |
| <b>DART Rate</b>               | <b>7.5</b>      | 7.1  | 7.0  | 7.1  | 6.1  | NA** | NA** | NA** | - 18.7                         |

\* Based on BLS Data

\*\* Data not available due to a BLS freeze on NAICS 92 data for data integrity reasons

## Intermediate Outcome Measures:

### Police Service FFY Activities

| Measure Description                      | 2012 Baseline | FFY 2020 |
|--|---------------|----------|
| Enforcement Inspections                  | 113           | 65       |
| Consultation Visits                      | 6             | 4        |
| Outreach and Technical Assistance Visits | 3             | 7        |

\* Information obtained from OIS

## Police Protection

### Introduction:

FFY 2020 was the fifth 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:

Much of our past partnership activity has been achieved through participation at large conferences, seminars, and training events. Due to the effects of the COVID-19 pandemic, we do not have any new activity of this type to report for FFY 2020, but we will further develop the aforementioned partnerships in the coming years of the new 5-year plan.

### Injury Data Collection & Analysis:

To allow our members more time to work directly with employers and develop useful injury and illness reduction strategies, our plan for FFY 2020 was to utilize NYSDOL BLS data, which had been shown over a number of previous years to be substantially similar to that obtained directly from employers. However, as mentioned earlier, this plan was not feasible because the BLS data was no longer published beginning in 2017. Therefore, our group will revert to the earlier practice of obtaining the injury and illness logs (SH-900) and summaries (SH-900.1) from each county sheriff's department and NYPD. FFY 2020 data will be used to establish the baseline for the next 5-year plan period.

### Inspections:

There was a total of 65 inspections performed during the 2020 FFY, which is a decrease from the baseline year of 2012, but comparable to the previous year (69). Many of the inspections have been COVID-19 fatality investigations, and, unfortunately, more are likely in FFY 2021.

### Consultations:

There was a total of four (4) consultations performed during the same period, compared to six (6) from the 2012 baseline year, which is a 33% decrease. Consultation visits are the most desired form of employer interaction, indicating a degree of employer trust and perceived credibility of our program. The consultations have been summarized in the below table. While relatively small in number, these visits are significant in that one pertains to a key safeguard of the leading causes of fatalities (gunshot wounds), and 50% involve training, which is welcome reversal of the law enforcement trend of normally not having training done by civilians.

| <b>Establishment</b>         | <b>Type</b>           | <b>Subject</b>                 |
|------------------------------|-----------------------|--------------------------------|
| Mechanicville City PD        | Follow-Up             | Asbestos & Electrical          |
| Saratoga Co Sheriff's Office | Correction Assistance | Ballistic Resistant Body Armor |
| Norwich City PD              | Training Assistance   | Bloodborne Pathogens           |
| Geneva City PD               | Training Assistance   | Rabies & Lyme Disease          |

**Outreach:**

There were seven (7) compliance assistance activities conducted in FFY 2020, compared to three (3) in the baseline year of 2012, amounting to a 133% increase. Most of these involved providing employers with technical assistance on COVID-19 issues at the onset of and throughout the pandemic. Our members were able to provide the information in a more timely and safe manner by doing so virtually by phone and email. We are hopeful that such interactions will lead to future consultation requests.

**Training:**

Law enforcement agencies typically avoid using civilians for their internal training programs. In recognition of this industry preference the committee relies on information sharing as a method for spreading awareness in the law enforcement community. Information shared includes the benefits of using the PESH Consultation services, and the compliance assistance and training information contained on the 2019 Law Enforcement CD. The committee has assembled quality information unique to the law enforcement community that can easily be incorporated in a police department's pre-shift daily briefing, in the form of short 'Safety Clips.' In 2020 we continued our efforts to enhance the material available by adding COVID-19 guidance specific to this industry and made some excellent progress by being invited to conduct training at the Norwich and Geneva City Police Departments.

**Future Activities Planned:**

This committee will continue their efforts by assisting New York's law enforcement community in a number of different ways. Information sharing is a critical component of the committee and a recognized strategy in reducing workplace injuries and illnesses. Name recognition is a key to obtaining additional consultations and compliance assistance visits. The 2020 PESH Law Enforcement CD has proven successful with both name recognition and a means to disseminate information, and our group will continue to improve the content. Our group is looking forward to continuing working with the Empire State Safety Association (ESSA) and NYS Division of Criminal Services, both providing opportunities to address trends or new issues with the group and disperse information in an exponentially effective way. Expanding upon this strategy, the committee will continue to look for partnerships with other State Agencies to develop an

additional online resource to act as a clearing house for the information contained on the resource CD. During the beginning of FFY 2021, our primary task will be to reach out to our various contacts and request 2020 injury and illness data. The data will be used to track rate reductions over the span of the plan, while NYSDOL Standard Occupational Code (SOC) data and national industry data, such as that contained in the 2018 Police Fact Sheet from BLS (<https://www.bls.gov/iif/oshwc/cfoi/police-2018.htm>) will be used to identify injury and illness trending that will guide us in selecting and developing appropriate strategies, interventions, and resource material.

## **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 continues to build and maintain 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 NYS DOL 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. Strategic Plan members have started working with New York State BLS to learn about additional statistical data BLS collects and can share with PESH.

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

**Primary Outcome Measures:**

**Fire Service Injury and DART Rates**

| Year                           | Baseline (2012) | 2013 | 2014   | 2015 | 2016 | 2017  | 2018  | % Reduction from Baseline Year |
|--------------------------------|-----------------|------|--------|------|------|-------|-------|--------------------------------|
| <b>Injury and Illness Rate</b> | <b>21.8</b>     | 24.0 | 79.1** | 20.1 | 15.9 | NA*** | NA*** | -27.1                          |
| <b>DART Rate</b>               | <b>20.0</b>     | 23.0 | 77.5** | 15.1 | 15.3 | NA*** | NA*** | -23.5                          |

\* Based on BLS Data

\*\* Outlier data anomaly not detected by BLS until after data was published

\*\*\* Data not available due to a BLS freeze on NAICS 92 data for data integrity reasons

**Intermediate Outcome Measures:**

**Fire Service FFY 2019 Activities**

| Measure Description                 | 2012 Baseline | FFY 2020 |
|-------------------------------------|---------------|----------|
| <b>Inspection Visits</b>            | 183           | 96       |
| <b>Consultation Visits</b>          | 25            | 19       |
| <b>Compliance Assistance Visits</b> | 55            | 11       |

\*Information obtained from OIS

**Fire Service**

**Introduction:**

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 Fire Coordinators and Emergency Managers through the New York State Emergency Management Association (NYSEMA) and the Local Emergency Planning Committee (LEPC) meetings.

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 mechanism for committee members to engage with the local and State fire and emergency response community.

**Inspections:**

There were 96 inspections in the fire service NAICS in FFY 2020 compared to 159 inspections in FFY 2019, and 183 inspections in the baseline year. Due to the COVID-19 pandemic the numbers are down.

**Consultations:**

There was a total of 19 consultations performed during FFY 2020 compared to 40 in FFY 2019; the reduction largely due to the COVID-19 pandemic.

**Compliance Assistance and Outreach:**

There was a total of 11 compliance assistance activities conducted during FFY 2020 compared to 55 that were performed during the 2012 baseline year. Although the number of formal outreach activities decreased due to the COVID-19 pandemic, the Strat Plan has reached out to volunteer fire departments. Letters were mailed to fire departments throughout New York State explaining who PESH is, what they do, consultation services and trainings available, the top 10 fire department violations, and the availability of additional resources. The mailings have received a significant upswing in positive interactions with the fire service in the State.

**Training / Conferences / Meetings:**

Committee members can impact a larger audience when presenting at County Chiefs meetings or other fire community events. During the FFY 2020 pandemic our conference and meeting numbers have decreased due to social distancing

**Compliance Assistance:**

During FFY 2020, Strategic Plan consultation and compliance assistance visits decreased from the previous year due to COVID-19. Village departments and individual departments in fire districts and fire protection districts have not been seeking help to achieve compliance with the PESH standards as in previous years, again do to social distancing protocols. Many smaller departments still appear to be facing challenges with declining membership, which can increase the difficulties a fire departments experiences in ensuring that their individual members meet the training requirements. Additionally, departments that had recent turnover in leadership positions struggle to find new and innovative ways of providing members training. Strategic Plan members have been able to help several local departments by networking with county and state level resources.

**Future Activities Planned:**

The Fire Strat Plan Committee will continue to look for emerging trends within the local fire service community using NYS BLS data, NYSEMA meetings and PESH activities (consultations, inspections and outreach). Newly appointed PESH leadership are working with

New York State BLS to learn about trending data that can be made available to the committee. Committee members will continue to target opportunities to present to County Chief Associations and other fire service groups to help promote our services and resources.

## **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 Strategic Plan 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.

**Inspections** –During FFY 2020 there were thirty-seven (37) inspections conducted in Nursing and Acute Hospital Care facilities compared to twenty-three (23) in FFY 2019.

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

**Compliance Assistance Activities** – There were ten (10) Compliance Assistance Visits conducted in Nursing and Hospital Care settings in FFY 2020 compared to thirty-four (34) in FFY 2019. For the past three years an emphasis was placed on documenting members outreach efforts within the OIS system.

**Training Seminars** – Strategic plan committee members were unable to co-sponsor any Safe Patient Handling Conferences as they were put on pause this year due to the ongoing COVID-19 pandemic. Discussions were held with committee members about different platforms that could be used for training purposes.



**Primary Outcome Measures:**

**Number of Lost Workdays Due to Patient/Resident Handling**

| <b>Nursing and Residential Care Facilities</b> |                  |                 |                 |                 |                 |                 |                 |                 |
|--|------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Measure  | 2012<br>Baseline | 2013            | 2014            | 2015            | 2016            | 2017            | 2018            | 2019            |
| # Lost Work Days due to Resident Handling      | 13,375           | 9,749           | 10,530          | 9,842           | 7,127           | 6,863           | 9,455           | 8437            |
| Change   | Baseline         | 27%<br>Decrease | 21%<br>Decrease | 26%<br>Decrease | 47%<br>Decrease | 49%<br>Decrease | 29%<br>Decrease | 37%<br>Decrease |
| <b>General and Surgical Hospitals</b>          |                  |                 |                 |                 |                 |                 |                 |                 |
| Measure  | 2012<br>Baseline | 2013            | 2014            | 2015            | 2016            | 2017            | 2018            | 2019            |
| # Lost Work Days due to Resident Handling      | 12,868           | 11,583          | 10,139          | 9,603           | 9,079           | 10,505          | 8,071           | 10,363          |
| Change   | Baseline         | 10%<br>Decrease | 21%<br>Decrease | 25%<br>Decrease | 29%<br>Decrease | 18%<br>Decrease | 37%<br>Decrease | 19%<br>Decrease |

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

| <b>Nursing and Residential Care Facilities</b> |                  |                 |                   |                  |                   |                   |                 |                 |
|--|------------------|-----------------|-------------------|------------------|-------------------|-------------------|-----------------|-----------------|
| Measure  | 2012<br>Baseline | 2013            | 2014              | 2015             | 2016              | 2017              | 2018            | 2019            |
| Lost Work Day Rate                             | 9.0              | 8.6             | 8.2               | 8.3              | 6.1               | 5.9               | 7.3             | 6.8             |
| Change   | Baseline         | 4%<br>Decrease  | 8.9%<br>Decrease  | 7.8%<br>Decrease | 32.2%<br>Decrease | 34.0%<br>Decrease | 19%<br>Decrease | 24%<br>Decrease |
| <b>General and Surgical Hospitals</b>          |                  |                 |                   |                  |                   |                   |                 |                 |
| Measure  | 2012<br>Baseline | 2013            | 2014              | 2015             | 2016              | 2017              | 2018            | 2019            |
| Lost Work Day Rate                             | 4.0              | 2.9             | 3.5               | 3.4              | 3.0               | 4.2               | 5.3             | 4.1             |
| Change   | Baseline         | 28%<br>Decrease | 12.5%<br>Decrease | 15%<br>Decrease  | 25%<br>Decrease   | 5.0%<br>Increase  | 25%<br>Increase | 2%<br>Increase  |

*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  
Healthcare FFY 2020 Activities**

| <b>Measure Description</b>            | <b>2012<br/>Baseline</b> | <b>YTD</b> |
|---------------------------------------|--------------------------|------------|
| <b>Inspection Visits *</b>            | 6                        | 23         |
| <b>Consultation Visits *</b>          | 0                        | 0          |
| <b>Compliance Assistance Visits *</b> | 4                        | 34         |

*Based on OIS Data*

**Introduction:**

FFY 2020 is the fifth 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:**

Strategic Plan committee members continued their partnership with the NYS Zero Lift Task Force, WNYCOSH and NYS DOH. During FFY 2020, the main focus was brainstorming ways to assist facilities remotely due to the COVID-19 pandemic. Strategic Plan committee members spent significant time discussing CDC guidance, NYS Executive Orders, and OSHA regulations with unions and management. Qualitative fit test kits were donated to Upstate Medical University to help ensure all necessary staff were fit tested.

**Inspections:**

During FFY 2020, there were thirty-seven (37) 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 517% increase in the number of inspections. Of the thirty-seven (37) inspections performed in FFY 2020, thirty-four (34) were completed at acute health care facilities and three (3) 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 2020 there were ten (10) compliance assistance visits conducted compared to the 2012 Baseline in which there were four (4) visits or an increase by 150%. This change is a reflection of member’s effort to utilize OIS to help illustrate the committee’s efforts.

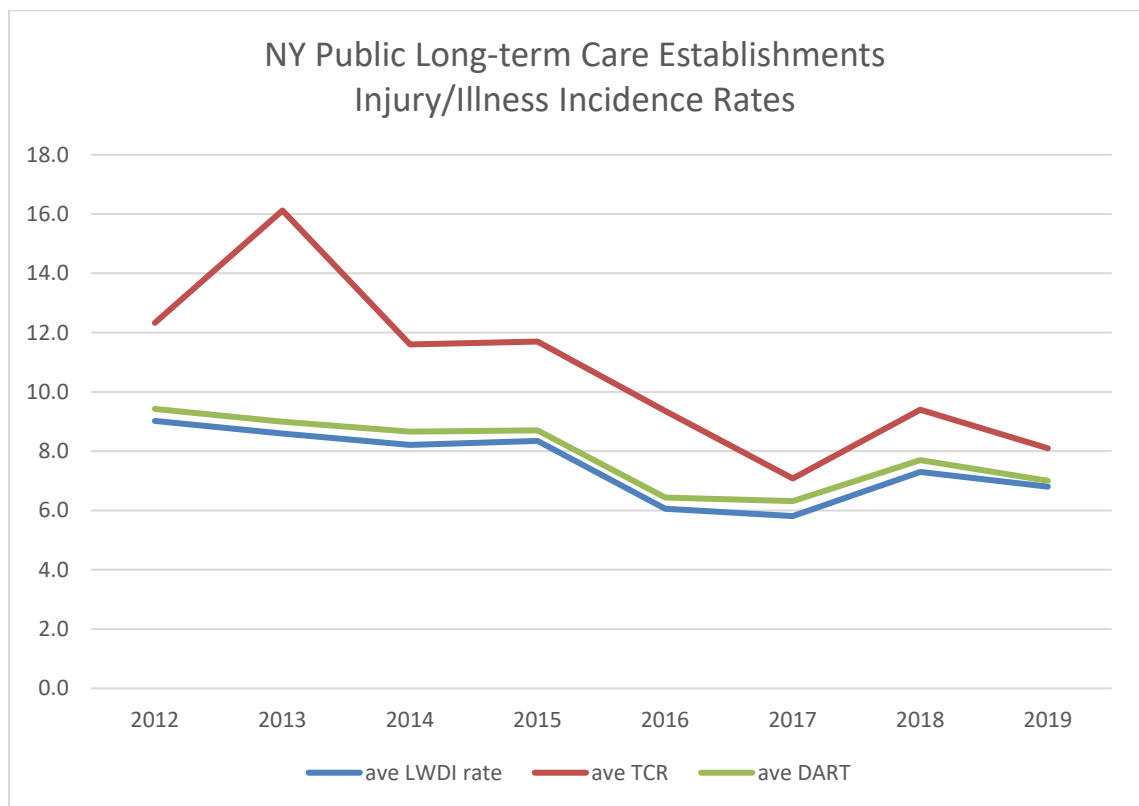
During 2020, the Strategic Plan committee customized years of compiled Injury and Illness data on spreadsheets, with the intent to share multiple years of accumulated data with the facilities.

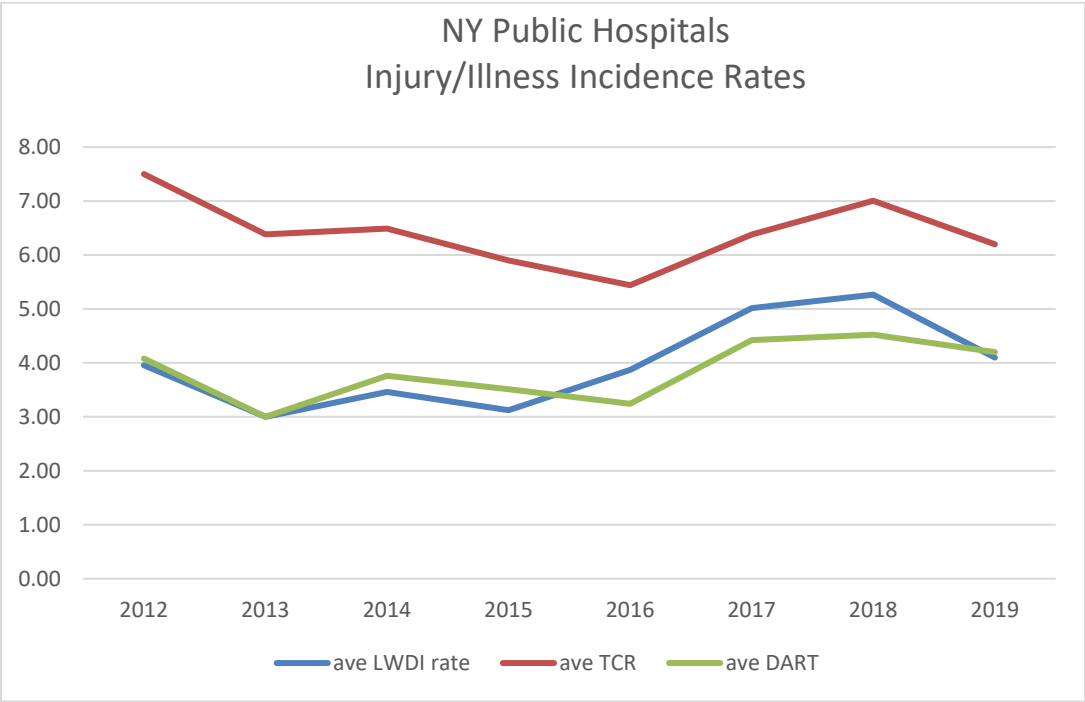
The facilities can compare their rates with their New York peers anonymously; including rate comparisons for specific causes of injuries. The facilities can see how they fare against other public health care facilities on injuries due to safe patient handling, slips, falls, workplace violence, etc. Due to the ongoing public health crisis, COVID-19, this spreadsheet was not shared with as many establishments as normal.

**Injury Data Collection & Analysis:**

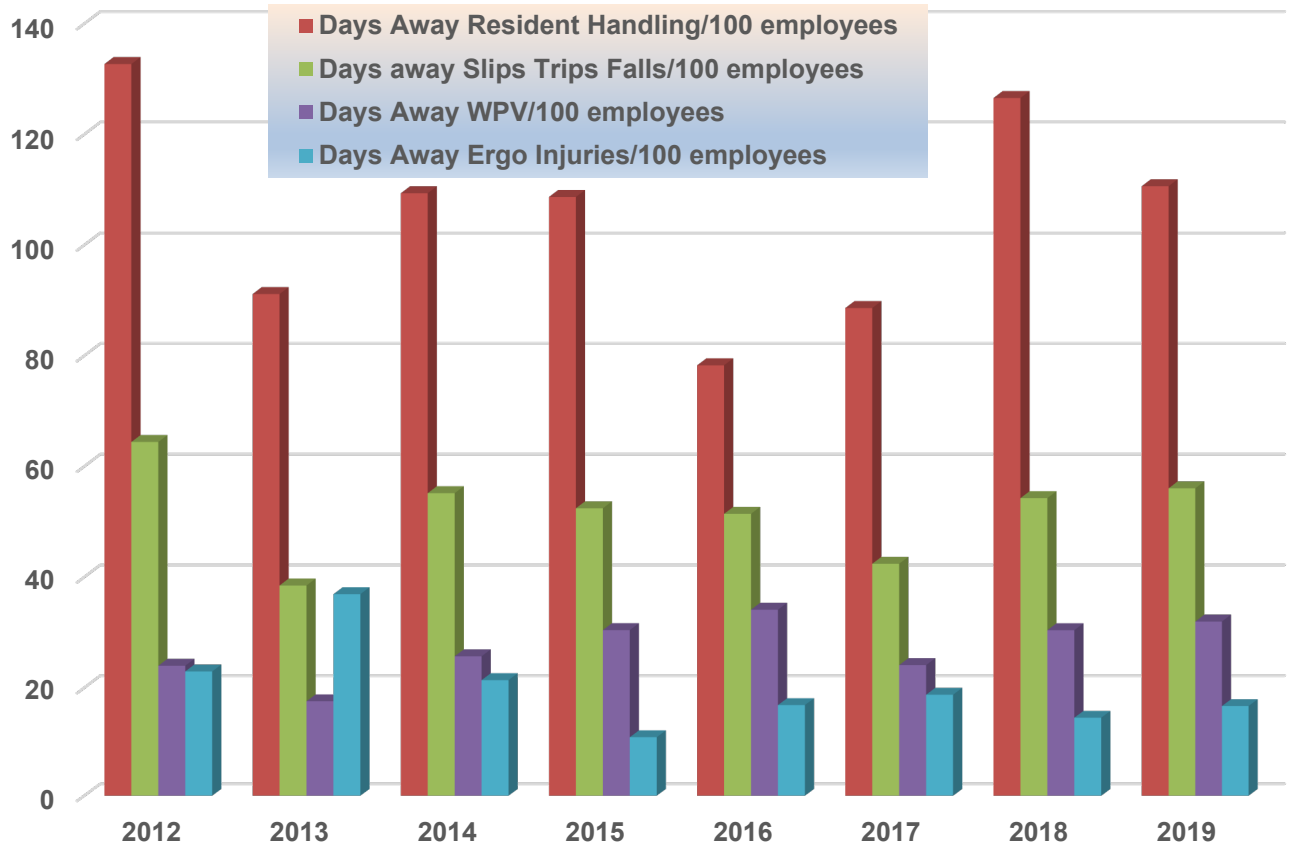
Each year the committee spends considerable time compiling injury and illness trends within long term care and acute health care facilities. From the lost workday data obtained, the committee now has over five years of lost work day data which has been used to categorize common injury types. Charts were created to help provide a comparison of the injury and illness data based on common injury types and the lost workdays 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.

Data collection indicated that changes in injuries due to resident handling in long-term care facilities continues to be a significant issue. *In acute care facilities (public hospitals in New York State), the Strat Plan noted a trend of increased injuries reported due to workplace violence. Outreach materials have been adjusted to address this trend.* Below in this report are examples of the different charts used to illustrate the trends from lost workdays for specific injury types.

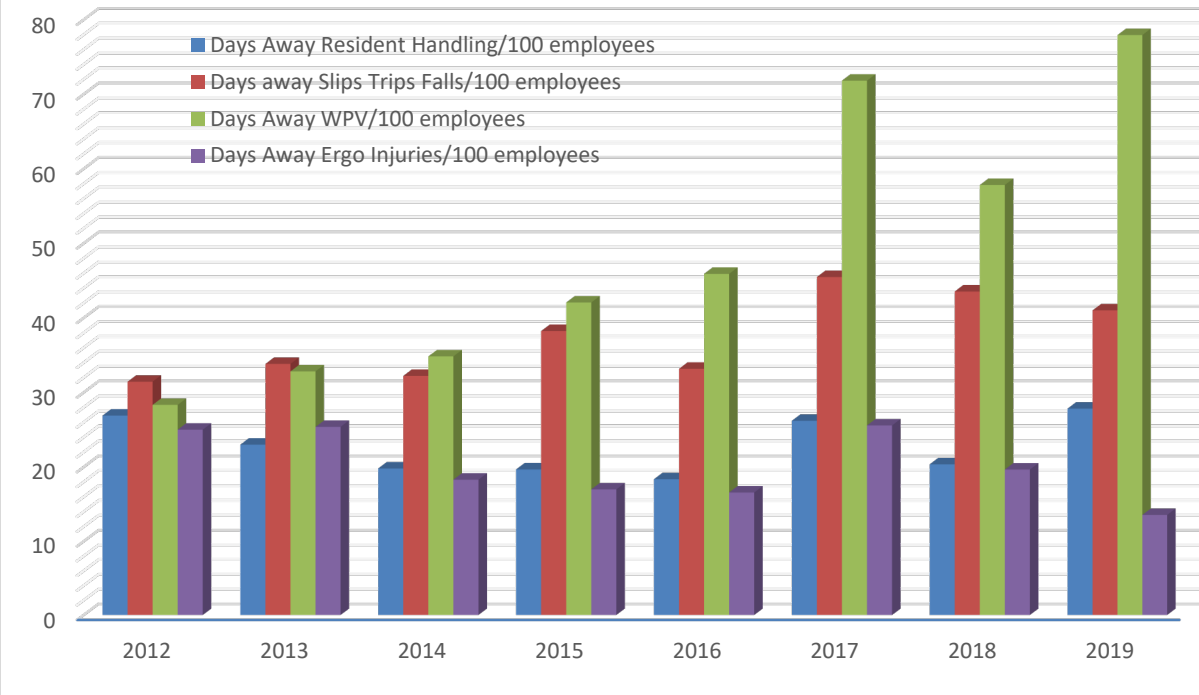




## Injury/Illness Severity as Days Away/100 Employees NY Public Long Term Care Establishments



## Injury/Illness Severity as Days Away/100 Employees NY Public Hospitals



### **Miscellaneous Activities or Comments:**

Each quarter committee members participate in conference calls, where members discuss current news pertaining to the industry, and develop strategies to address newly identified trends and issues. Significant time was spent on the COVID-19 pandemic. Committee members continue to participate in Zero Lift Task Force conference calls and work on upcoming Safe Patient Lifting Conferences.

### **Training:**

Committee members typically do not conduct specific training to provide a facilities training requirement. Training success has been tied in with the Safe Patient Lifting Conferences, where each year industry experts are invited to participate by presenting on their areas of expertise. An informal training approach is used when committee members interact with facility staff and discuss injury and illness prevention strategies.

### **Future Activities Planned:**

The process of soliciting, compiling and trending each year's Injury and Illness data consumes significant Strategic Plan resources. However, the awareness provided by the data is crucial for the committee's ability to develop new strategies for changing trends. Committee efforts will continue with the planning of upcoming Safe Patient Handling Conferences, their involvement in the NYS Zero Lift Task Force and the NYS Safe Patient Handling Work Group. The committee has compiled over five years of injury data, categorized by common injuries for each facility.

Efforts will continue to share the injury and illness data they have compiled with the long-term care facilities and acute public hospitals.

Due to the ongoing public health crisis efforts will continue to provide assistance with injury and illness recordkeeping, respiratory protection, hazard communication, and personal protective equipment.