

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

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.

PESH response to Finding FY 2020-03:

Efforts are currently underway to hire hourly staff to fill inspector and administrative assistant roles until such time that permanent positions may be offered.

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.

PESH response to Finding FY 2020-04:

The volume of reported and referred deaths of public employees among the more than fifty thousand New York State deaths related to COVID-19 has created an extraordinary circumstance which exceeds the capacity of our program to respond through established means of workplace fatality investigation. Given the widespread transmission of the virus, it is inaccurate to include all “potential workplace-related COVID-19 fatalities”, which occurred during a global pandemic, as “Work-Related Fatalities” under this metric. Of the public employee COVID-19 fatalities PESH was informed of, none have been verified to be the result of workplace exposure to SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2). PESH responds to a majority of workplace deaths within one workday of a reported incident. Some exceptions are made when lack of an occupational exposure does not warrant an immediate response, such as health-related incidents where there are no related workplace exposures indicated. PESH continues to examine COVID-19 related fatalities of public employees for work-relatedness as well as protective measures employers continue to implement as federal and state guidelines change with conditions.

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.

PESH response to Finding FY 2020-05:

Updates to Part 801 of NYS Labor Law 27-a, submitted to NYSDOL Counsel, would make PESH at least as effective as 1904.