

GOTHAM SAFETY & LOSS PREVENTION

"SAVING LIVES AND BOTTOM LINES"

Compulsory Workplace Safety and Loss Prevention Program New York State Department of Labor (NYSDOL) Industrial Code Rule (ICR) 59

Frequently Asked Questions (FAQ)

Why did my business receive a notice that says it must take part in the Workplace Safety and Loss Prevention Program?

Section 134 of the Workers' Compensation law established a Compulsory Workplace Safety and Loss Prevention Program. Your business must take part in this program if your:

- Annual payroll is in excess of \$800,000, *and*
- Most recent experience modification rating exceeds 1.20.

You will get a notice from the New York Compensation Insurance Rating Board (NYCIRB) if you are subject to the program.

My business hasn't received a notice from the NYCIRB but I keep receiving solicitations for ICR 59 services. Is this legitimate?

If your business is being solicited for ICR 59, you appeared on a distribution list that is disseminated to NYSDOL Certified Safety Consultants (CSC) who are authorized to handle your consultation and evaluation. Unfortunately, the notice from the NYCIRB often gets mistaken for junk mail or doesn't end up making its way to the right person at your company who understands what to do with it.

If you keep receiving solicitations but never received a copy of your original notification from the NYCIRB, you can reach out to your workers' comp carrier or the NYCIRB directly to request a reprinted copy of the notification letter.

How is my experience modification rate determined?

The NYCIRB sets the rates. It compares three years of your loss experience to the average of all employers in the same business class, and how your business compares to the average sets your rating. They use New York State payroll and losses only. Interstate modifications issued by the National Council on Compensation Insurance (NCCI) for multi-state employers cannot substitute for experience ratings calculated by NYCIRB.

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Can I appeal a notice from NYCIRB?

An employer should contact their insurance carrier if they feel any information that the NYCIRB used to calculate the experience modification rate or payroll is incorrect. The insurance carrier should then approach the NYCIRB and ask for a review of the data submitted. Companies are more likely to be removed from the compulsory program if payroll or losses for the calculation years are incorrect or if the employer has gone out of business or switched to a self-insurance program. In these cases, the NYCIRB will send the NYSDOL a notice amending the original notification.

If you switch to self-insurance, your business will only be removed from this program if the switch occurred before the notice was issued.

What do I have to do once I have received a notice from the NYCIRB?

You must set up a consultation and evaluation by a NYSDOL Certified Safety Consultant (CSC). You must do this within 30 days of receiving the notice. You must notify your insurer and the NYSDOL in writing of the name, address and certification number of the consultant you have hired, within 10 days of setting up the consultation. Include the dates the consultation is supposed to begin and end. The consultation must be completed and the consultant's report received within 75 days of the date on the notice.

You must provide your insurer and the NYSDOL with a copy of the evaluation report within 30 days of receiving it from the consultant. Include a written statement that describes how you will complete any remedial action recommended by the report. Also include the expected start and end date of that remedial action. If you plan to hire someone to provide remediation services, include the name(s) of the individual(s) and / or organization(s). The remedial action must be finished within 6 months after you receive the evaluation report.

The insurer must conduct an inspection within 60 days of the end of the 6-month period. They will assess whether the recommended remedial action has been taken. The insurer must give a copy of its inspection report to you and the NYSDOL within 45 days of the re-inspection.

Who can I hire to do the consultation and evaluation required by the Compulsory Workplace Safety and Loss Prevention Program?

You must use a consultant who has been certified by the NYSDOL. The professionals at Gotham Safety are certified to conduct the consultation and evaluation, and a list of other certified consultants is available on the NYSDOL website at:

<https://applications.labor.ny.gov/WSLPIPSpecialistSearch/specialistSearch.faces>

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What is the likely cost of a consultation and evaluation?

Private safety consultants calculate and charge their own fees to perform a consultation and evaluation. The NYSDOL does not control the fees set by private consultants.

Can I appeal the timeframes for notifying the NYSDOL or scheduling a consultation?

There are no provisions to formally appeal the prescribed timeframes. You should make every effort to document your attempts to meet them. Contact the NYSDOL if there are extenuating circumstances.

What is the penalty for non-compliance?

There is a penalty if you fail to:

- Arrange for a consultation and evaluation,
- Take the remedial action recommended by your consultant's report, or
- Fail to meet the deadlines.

You must take these actions within the proper timeframes. The penalty is a 5% surcharge to your manual rate premium for the next policy period. Your insurer will charge this to your workers' compensation insurance policy. The penalty is cumulative and increases by 5% for each year of non-compliance.

What if I disagree with the result of my insurer's re-inspection?

Your insurer may find that you have not taken the remedial action recommended in the evaluation report and notify the NYSDOL of your non-compliance. You may appeal if you disagree. You must appeal to the NYSDOL within 30 days of receiving your insurer's re-inspection report. You must notify your insurer of the appeal. NYSDOL is responsible for settling these disputes. Their decision will be binding on all parties.

What happens once I appeal a determination of non-compliance?

The NYSDOL will conduct an independent inspection. The NYSDOL's determination of compliance or non-compliance will be final. However, your appeal will not be considered if you have not paid your billed premium, including any surcharges.

For questions not answered here, please reach out to Gotham Safety by calling 516.882.6061 or emailing info@GothamSafetyNY.com