

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1388*
Committee Substitute Favorable 6/12/92

Short Title: Safety Programs and Committees.

(Public)

Sponsors:

Referred to:

May 28, 1992

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE CERTAIN EMPLOYERS TO ESTABLISH SAFETY AND
3 HEALTH PROGRAMS AND SAFETY AND HEALTH COMMITTEES IN THE
4 WORKPLACE.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 95 of the General Statutes is amended by adding a new
7 Article to read as follows:

8 **"ARTICLE 22.**

9 **"EMPLOYEE SAFETY AND HEALTH.**

10 **"PART 1.**

11 **"SAFETY AND HEALTH PROGRAMS.**

12 **"§ 95-250. Safety and health programs.**

13 (a) Establishment of program.—Each employer with an experience rate modifier
14 of 1.5 or greater shall, in accordance with this Part, establish and carry out a safety and
15 health program to reduce or eliminate hazards and to prevent injuries and illnesses to
16 employees.

17 (b) Modifications to safety and health programs.—The Commissioner may modify
18 the application of the requirements of this section to classes of employers where the
19 Commissioner determines that, in light of the nature of the risks faced by the employees
20 of such employers, such a modification would not reduce the employees' safety and
21 health protection.

22 **"§ 95-251. Safety and health program requirements.**

1 A safety and health program established and carried out under this Part shall be a
2 written program that shall include:

- 3 (1) Methods and procedures for identifying, evaluating, and documenting
4 safety and health hazards;
- 5 (2) Methods and procedures for correcting the safety and health hazards
6 identified under subdivision (1);
- 7 (3) Methods and procedures for investigating work-related fatalities,
8 injuries, and illnesses;
- 9 (4) Methods and procedures for providing occupational safety and health
10 services, including emergency response and first aid procedures;
- 11 (5) Methods and procedures for employee participation in the
12 implementation of the safety and health program, including
13 participation through any safety and health committee established
14 under Part 2 of this Article;
- 15 (6) Methods and procedures for responding to the recommendations of the
16 safety and health committee, where applicable;
- 17 (7) Methods and procedures for providing safety and health training and
18 education to employees and to members of any safety and health
19 committee established under Part 2 of this Article;
- 20 (8) The designation of a representative of the employer who has the
21 qualifications and responsibility to identify safety and health hazards
22 and the authority to initiate corrective action where appropriate;
- 23 (9) In the case of a worksite where employees of two or more employers
24 work, procedures for each employer to protect employees at the
25 worksite from hazards under the employer's control, including
26 procedures to provide information on safety and health hazards to
27 other employers and employees at the worksite; and
- 28 (10) Such other provisions as the Commissioner requires to effectuate the
29 purposes of this Part.

30 **"§ 95-252. Safety and health program rules; compensation.**

31 (a) Not later than one year after the effective date of this Article, the
32 Commissioner shall adopt final rules concerning the establishment and implementation
33 of employer safety and health programs under this Part. Rules adopted under this Part
34 shall include provisions for the training and education of employees and safety and
35 health committee members. These rules shall:

- 36 (1) Provide for the training and education of employees, including safety
37 and health committee members, in a manner that is readily
38 understandable by such employees, concerning safety and health
39 hazards, control measures, the employer's safety and health program,
40 employee rights and applicable laws and regulations;
- 41 (2) Provide for the training and education of the safety and health
42 committee concerning methods and procedures for hazard recognition
43 and control, the conduct of worksite safety and health inspections, the
44 rights of the safety and health committee, and concerning other

1 information necessary to enable such members to carry out the
 2 activities of the committee under Part 2 of this Article;

3 (3) Require that training and education be provided to new employees at
 4 the time of employment and to safety and health committee members
 5 at the time of selection; and

6 (4) Require that refresher training be provided on at least an annual basis
 7 and that additional training be provided to employees and to safety and
 8 health committee members when there are changes in conditions or
 9 operations that may expose employees to new or different safety or
 10 health hazards or when there are changes in safety and health rules or
 11 standards under Article 16 of this Chapter that apply to the employer.

12 (b) No loss of pay.—The time during which employees are participating in
 13 training and education activities under this subsection shall be considered as hours
 14 worked for purposes of wages, benefits, and other terms and conditions of employment.
 15 The training and education shall be provided by an employer at no cost to the
 16 employees of the employer.

17 "PART 2.

18 "SAFETY AND HEALTH COMMITTEES

19 AND EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES.

20 "§ 95-260. Safety and health committees required.

21 (a) Each employer subject to the provisions of this Part shall provide for the
 22 establishment of safety and health committees and the selection of employee safety and
 23 health representatives in accordance with this section. An employer is subject to this
 24 Part if it has 11 or more employees and an experience rate modifier of 1.5 or greater.

25 (b) Safety and health committees.—

26 (1) In general.—Each employer covered by this Part shall establish a safety
 27 and health committee at each worksite of the employer, except as
 28 provided herein:

29 a. An employer covered by this Part whose employees do not
 30 primarily report to or work at a fixed location is required to
 31 have only one safety and health committee to represent all
 32 employees.

33 b. A safety and health committee is not required at a covered
 34 employee's worksite with less than 11 employees.

35 c. The Commissioner may, by rule, modify the application of this
 36 subdivision to worksites where employees of more than one
 37 employer are employed.

38 Each employer required to establish a safety and health committee
 39 under this Part shall, pursuant to rules adopted by the Commissioner,
 40 enable the committee to exercise the rights described in this Part.

41 (2) Membership.—Each safety and health committee shall consist of:

42 a. The employee safety and health representatives elected or
 43 appointed under G.S. 95-261; and

- 1 b. As determined appropriate by the employer, employer
2 representatives, the number of which may not exceed the
3 number of employee representatives.
- 4 (3) Chairpersons.—Each safety and health committee shall be cochaired by:
- 5 a. A representative selected by the employer; and
6 b. A representative selected by the employee members of the
7 committee.
- 8 (4) Rights.—Each safety and health committee may, within reasonable
9 limits and in a reasonable manner:
- 10 a. Review any safety and health program established by the
11 employer under Part 1 of this Article;
12 b. Review incidents involving work-related fatalities, injuries and
13 illnesses, and complaints regarding safety or health hazards by
14 employees;
15 c. Review, upon the request of the committee or upon the request
16 of the employer representatives or employee representatives of
17 the committee, the employer's work injury and illness records,
18 other than personally identifiable medical information, and
19 other reports or documents relating to occupational safety and
20 health;
21 d. Conduct inspections of the worksite at least once every three
22 months and in response to complaints regarding safety or health
23 hazards by employees or committee members;
24 e. Conduct interviews with employees in conjunction with
25 inspections of the worksite;
26 f. Conduct meetings, at least once every three months, and
27 maintain written minutes of such meetings;
28 g. Observe the measurement of employee exposure to toxic
29 materials and harmful physical agents;
30 h. Establish procedures for exercising the rights of the committee;
31 i. Make recommendations on behalf of the committee, and in
32 making recommendations, permit any members of the
33 committee to submit separate views to the employer for
34 improvements in the employer's safety and health program and
35 for the correction of hazards to employee safety or health,
36 except that recommendations shall be advisory only and the
37 employer shall retain full authority to manage the worksite; and
38 j. Accompany the Commissioner or the Commissioner's
39 representative during any physical inspection of the worksite.
- 40 (5) Time for committee activities.—The employer shall permit members of
41 the committee established under this Part to take the time from work
42 reasonably necessary to exercise the rights of the committee without
43 suffering any loss of pay or benefits for time spent on duties of the
44 committee.

1 (6) Rules.—Not later than one year after the effective date of this Article,
2 the Commissioner shall adopt final rules for the establishment and
3 operation of safety and health committees pursuant to this Part. The
4 rules shall include provisions concerning:

5 a. The establishment of such committees by an employer whose
6 employees do not primarily report to or work at a fixed
7 location;

8 b. The establishment of committees at worksites where employees
9 of more than one employer are employed; and

10 c. The employer's obligation to enable the committee to function
11 properly and effectively, including the provision of facilities
12 and materials necessary for the committee to conduct its
13 activities, and the maintenance of records and minutes
14 developed by the committee.

15 **"§ 95-261. Employee safety and health representatives.**

16 (a) In general.—Safety and health committees established under this Part shall
17 include:

18 (1) One employee safety and health representative where the average
19 number of nonmanagerial employees of the employer at the worksite
20 during the preceding year was more than 10, but less than 50;

21 (2) Two employee safety and health representatives where the average
22 number of nonmanagerial employees of the employer at the worksite
23 during the preceding year was more than 50, but less than 100;

24 (3) An additional employee safety and health representative for each
25 additional 100 such employees at the worksite, up to a maximum of six
26 employee safety and health representatives; and

27 (4) Where an employer's employees do not primarily report to or work at a
28 fixed location or at worksites where employees of more than one
29 employer are employed, a number of employee safety and health
30 representatives as determined by the Commissioner by rule.

31 (b) Selection.—Employee safety and health representatives shall be selected by
32 and from among the employer's nonmanagerial employees in accordance with rules
33 adopted by the Commissioner. The rules adopted by the Commissioner may provide for
34 different methods of selection of worksites with no bargaining representative, worksites
35 with one bargaining representative, and worksites with more than one bargaining
36 representative.

37 **"§ 95-262. Additional rights.**

38 The rights and remedies provided to employees and employee safety and health
39 representatives by this section are in addition to, and not in lieu of, any other rights and
40 remedies provided by contract, by other provisions of this act or by other applicable
41 law, and are not intended to alter or affect such rights and remedies.

42 **"§ 95-263. Definitions.**

43 The following definitions shall apply to this Article:

1 (1) 'Experience rate modifier' means the numerical modification applied to
2 an experience rating for use in determining workers' compensation
3 premiums.

4 (2) 'Worksite' means a single physical location where business is
5 conducted or where operations are performed by employees of an
6 employer.

7 The definitions of Article 16 of this Chapter shall also apply to this Article, except
8 that 'employee,' for the purposes of G.S. 95-260(a), 95-260(b)(1)b., 95-264, and 95-265,
9 means an employee employed for some portion of a working day in each of 20 or more
10 calendar weeks in the current or preceding calendar year.

11 **"§ 95-264. Reports.**

12 Upon the final adoption of all rules required to be adopted by the Commissioner
13 under this Article, the Commissioner shall determine, based on information provided by
14 the North Carolina Rate Bureau, the employers with an experience rate modifier of 1.5
15 or greater and shall notify these employers of the applicability of Part 1 of this Article
16 and the potential applicability of Part 2 of this Article.

17 Within 60 days of notification by the Commissioner, the employer shall certify on
18 forms provided by the Commissioner that it meets the requirements of Part 1 of this
19 Article and, if applicable, the requirements of Part 2 of this Article.

20 The Commissioner shall notify an employer when its experience rate modifier falls
21 below 1.5. An employer subject to the provisions of Part 2 of this Article shall notify
22 the Commissioner if it no longer employs 11 or more employees and has discontinued
23 or will discontinue its safety and health committee.

24 **"§ 95-265. Penalties.**

25 The Commissioner may levy a civil penalty, not to exceed the amounts listed herein,
26 for a violation of Parts 1 or 2 of this Article:

27 <u>Employers with 10 or less employees</u>	<u>\$ 2,000</u>
28 <u>Employers with 11-50 employees</u>	<u>\$ 5,000</u>
29 <u>Employers with 50-100 employees</u>	<u>\$10,000</u>
30 <u>Employers with more than 100 employees</u>	<u>\$25,000.</u>

31 The Commissioner, in determining the amount of the penalty, shall consider the
32 nature of the violation, whether it is first or subsequent violation, and the steps taken by
33 the employer to remedy the violation upon discovering the violation.

34 An employer may appeal a penalty levied by the Commissioner pursuant to this
35 section to the Safety and Health Review Board subject to the procedures and
36 requirements applicable to contested penalties under Article 16 of this Chapter. The
37 determination of the Board shall be final unless further appeal is made to the courts
38 under the provisions of Chapter 150B of the General Statutes.

39 All civil penalties and interest recovered by the Commissioner, together with the
40 costs thereof, shall be paid into the General Fund of the State treasury."

41 Sec. 2. This act is effective upon ratification and applies on the date of
42 adoption of final rules by the Commissioner of Labor.