

WORKERS COMP REFORM ACT  
CHAPTER 6, LAWS OF 2007, SECTION 33  
WORKPLACE SAFETY & LOSS PREVENTION PROGRAMS

13 § 33. Section 134 of the workers' compensation law, as added by chap-  
14 ter 635 of the laws of 1996, is amended to read as follows:

15 § 134. Workplace safety and loss prevention program; certification of  
16 safety and loss management specialists. 1. The commissioner of labor,  
17 in consultation with the superintendent of insurance~~[7]~~ and the chair of  
18 the ~~[workers' compensation] board[, and the president of the compen-~~  
19 ~~sation insurance rating board,]~~ shall develop a compulsory workplace  
20 safety and loss prevention program for all employers whose most recent  
21 annual payroll is in excess of eight hundred thousand dollars and whose  
22 most recent experience rating exceeds the level of 1.2. The commission-  
23 er of labor~~[, shall request that the safety panel established by this~~  
24 ~~section provide recommendations for the establishment, creation and~~  
25 ~~implementation of the safety incentive program provided for in subdivi-~~  
26 ~~sion six of this section and]~~ shall promulgate rules and regulations for  
27 the implementation of ~~[this program]~~ safety, drug and alcohol  
28 prevention, and return to work incentive programs.

29 2. The ~~[compensation insurance rating board or such other rating~~  
30 ~~organization licensed by the state for the purpose of providing loss and~~  
31 ~~rate information]~~ commissioner of labor shall provide written notifica-  
32 tion to employers whose most recent annual payroll is in excess of eight  
33 hundred thousand dollars and whose most recent experience rating exceeds  
34 the level of 1.2 that they are required to undergo a workplace safety  
35 and loss prevention consultation and written evaluation. Copies of the  
36 written notification shall be provided to the department of labor and  
37 the employer's insurer. The employer must arrange for the consultation  
38 and evaluation within thirty days after receiving the notification and  
39 must within ten days thereafter notify its insurer and the department of  
40 labor in writing of the means by which the evaluation is to be accom-  
41 plished. The employer must provide its insurer and the department of  
42 labor with a copy of the evaluation within thirty days after receiving  
43 it from the safety and loss consultant. Any remedial action recommended  
44 in the evaluation must be implemented by the employer within a reason-  
45 able period of time, but not to exceed six months after the employer  
46 receives the evaluation. The insurer, within sixty days after the expi-  
47 ration of such six month period, shall conduct an inspection to ascer-  
48 tain whether the recommended remedial action has been implemented, and  
49 the insurer shall within forty-five days thereafter provide to the  
50 employer and the department of labor a copy of its inspection report.

51 3. If the employer does not arrange for a consultation and evaluation  
52 or fails to implement recommended remedial action within the times  
53 prescribed, the insurer shall surcharge the employer's manual rate  
54 premium by .05 for the next ensuing policy period, and so long as non-  
55 compliance continues there shall be an additional .05 surcharge for each  
56 year thereafter of non-compliance. An employer may challenge an insur-  
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1 er's determination that the employer has not taken the recommended reme-  
2 dial action by appeal to the department of labor on notice to the insur-  
3 er. The department of labor shall thereafter conduct an independent  
4 inspection and its determination of compliance or non-compliance shall  
5 be final. However, such appeal may not be entertained if the employer  
6 has not paid its billed premium including any surcharge thereof.

7 4. Employers required to participate in the workplace safety and loss  
8 prevention program established by this section shall be permitted to  
9 utilize the services of either the department of labor, or a private

10 safety and loss consultant which has been certified by the department of  
11 labor and has paid the appropriate certification fee prescribed by rules  
12 and regulations promulgated under this section. Private safety and loss  
13 consultants may charge employers a fee for their services, and where  
14 employers elect to have the services provided by the department of  
15 labor, they shall pay for such services in accordance with fee schedules  
16 established by the department of labor's rules and regulations.

17 5. Fees charged by the department of labor to employers for workplace  
18 safety and loss prevention consultations and evaluations and fees  
19 charged to private safety and loss consultants for certification shall  
20 be paid to the commissioner of taxation and finance and the comptroller  
21 and deposited in the department of labor accounts designated for such  
22 purposes. The fees deposited in those designated accounts shall be used  
23 to cover administrative expenses of this program.

24 6. Safety, drug and alcohol prevention, and return to work incentive  
25 [program] programs. Employers insured through the state insurance fund  
26 (except those who are current policyholders in a recognized safety  
27 group) or any other insurer that issues policies of workers' compen-  
28 sation insurance, shall be eligible for a credit in workers' compen-  
29 sation insurance premiums if they:

30 a. pay annual workers' compensation insurance premiums of at least  
31 five thousand dollars; and

32 b. maintain an experience rating of under 1.30 for the year preceding  
33 and the years in which the credit has been applied for provided that no  
34 insured required to implement a safety program pursuant to subdivision  
35 one of this section shall be eligible for a premium credit under this  
36 subdivision; and

37 c. implement any of the following:

38 (1) a safety incentive plan, that has been recommended by a safety and  
39 loss management specialist after such specialist has been certified by  
40 the [safety panel established pursuant to this section. The credit,  
41 which shall be five percent of the workers' compensation insurance  
42 premium, shall be provided to the employer at the end of the policy  
43 year. The credit shall be available for two consecutive years, provided  
44 that the safety incentive plan shall have been implemented for a minimum  
45 of six months during the first year for which the credit is sought, and  
46 that such plan shall have been implemented for a full twelve months  
47 during the second year for which the credit is sought.] commissioner of  
48 labor, or if such plan otherwise conforms to regulations promulgated by  
49 the commissioner of labor;

50 (2) a drug and alcohol prevention program that conforms to regulations  
51 issued by the commissioner of labor, in consultation with the office of  
52 alcoholism and substance abuse services; and

53 (3) a return to work program that conforms to regulations issued by  
54 the commissioner of labor.

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1 The credit for each such program shall be established by regulations  
2 issued by the superintendent of insurance. Such regulations shall  
3 include provisions for recertification on an annual basis.

4 7. A self-insured employer shall be eligible for a reduction in the  
5 security deposit provided for in subdivision three of section fifty of  
6 this article if such employer has implemented any of the following: a. a  
7 safety incentive plan that has been recommended by a safety and loss  
8 management specialist after such specialist has been certified by the  
9 [safety panel established pursuant to this section. The amount of the  
10 reduction in the required security deposit shall be no greater than five  
11 percent or such lesser amount as determined by the chair of the board to

12 ~~be necessary to assure that the deposit remains sufficient to secure the~~  
13 ~~employer's liability to pay the compensation provided in this chapter.~~  
14 ~~The reduction shall be provided to the employer at the end of the policy~~  
15 ~~year. The reduction shall be available for two consecutive years,~~  
16 ~~provided that the safety incentive plan shall have been implemented for~~  
17 ~~a minimum of six months during the first year for which the reduction is~~  
18 ~~sought, and that such plan shall have been implemented for a full twelve~~  
19 ~~months during the second year for which the reduction is sought.]~~  
20 commissioner of labor or if such plan otherwise conforms to regulations  
21 promulgated by the commissioner of labor;

22 b. a drug and alcohol prevention program that conforms to regulations  
23 issued by the commissioner of labor, in consultation with the office of  
24 alcoholism and substance abuse services; and

25 c. a return to work program that conforms to regulations issued by the  
26 commissioner of labor.

27 The credit for each program shall be no greater than established by  
28 regulations issued by the superintendent of insurance or such lesser  
29 amount as determined by the chair of the board to be necessary to assure  
30 that the deposit remains sufficient to secure the employer's liability  
31 to pay the compensation provided in this chapter. The chair, in consul-  
32 tation with the superintendent of insurance, shall adopt regulations  
33 which provide for recertification on an annual basis.

34 8. ~~[There is hereby established a safety panel which shall have the~~  
35 ~~responsibility to]~~ The commissioner of labor shall: (i) receive and  
36 review applications from applicants for certification as safety and loss  
37 management specialists; and (ii) certify persons as safety and loss  
38 management specialists; and (iii) revoke certification of safety and  
39 loss management specialists for just cause.

40 ~~[a. The safety panel shall consist of three voting members. One member~~  
41 ~~shall be the president of the compensation insurance rating board. The~~  
42 ~~two remaining members shall be appointed by the governor as follows: a~~  
43 ~~representative of the business community appointed upon the recommenda-~~  
44 ~~tion of the business council of New York state, incorporated; a repre-~~  
45 ~~sentative of organized labor appointed upon the recommendation of the~~  
46 ~~New York state American federation of labor-congress of industrial~~  
47 ~~organizations. Members appointed by the governor shall serve for terms~~  
48 ~~of three years from the date of their appointment. Such members shall~~  
49 ~~serve until their successors are appointed by the governor. The commis-~~  
50 ~~sioner of labor, the chair of the board and the superintendent of insur-~~  
51 ~~ance, or their designees, shall serve as ex officio non-voting members~~  
52 ~~of the safety panel.~~

53 ~~b. The safety panel shall meet at least quarterly. The president of~~  
54 ~~the compensation insurance rating board shall serve as chairperson.~~  
55 ~~Members shall serve without compensation, except that they shall be~~

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1 ~~allowed their actual and necessary expenses incurred in the performance~~  
2 ~~of their duties pursuant to this section.]~~

3 9. The ~~[board]~~ commissioner of labor shall monitor all safety incen-  
4 tive plans implemented by employers. As part of this responsibility, the  
5 board shall insure that employee representatives are involved in the  
6 development of such plans through meetings and discussions with the  
7 respective certified safety and loss management specialist.

8 10. ~~[After consultation with the safety panel established pursuant to~~  
9 ~~this section, the]~~ The commissioner of labor, in consultation with the  
10 superintendent of insurance, shall promulgate rules and regulations for  
11 the certification of safety and loss management specialists. Such rules

12 and regulations shall include provisions that outline the minimum quali-  
13 fications for safety and loss management specialists, procedures for  
14 certification, causes for revocation or suspension of certification and  
15 appropriate administrative and judicial review procedures, violations  
16 and penalties for misuse of certification by certified safety and loss  
17 management specialists, and fees for certificate and certificate  
18 renewal.