

**DRAFT as of 08/25/08**

Labor Law Regulation Part 60 Pursuant to Section 134 of the Workers' Compensation Law as amended by Chapter 6 of the Laws of 2007 –

**PART 60 – WORKPLACE SAFETY AND LOSS PREVENTION  
INCENTIVE PROGRAM (SAFETY, DRUG AND ALCOHOL  
PREVENTION, AND RETURN TO WORK INCENTIVE PROGRAMS).**

(Statutory Authority: Workers' Compensation Law Section 134)

Subpart 60-1

**WORKPLACE SAFETY AND LOSS PREVENTION INCENTIVE PROGRAMS  
(SAFETY, DRUG AND ALCOHOL PREVENTION, AND RETURN TO WORK  
INCENTIVE PROGRAMS)**

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### **§60-1.1 Title and Citation.**

Within and for the purpose of the Department of Labor, this Part may be known as Industrial Code Rule No. 60. This Part relates to the Safety Incentive Program, the Drug and Alcohol Prevention Program and the Return to Work Program (collectively referred to as the “Workplace Safety and Loss Prevention Incentive Program,” or “WSLPIP”). It may be cited as Industrial Code Rule 60, or the Workplace Safety and Loss Prevention Incentive Program, or WSLPIP.

### **§60-1.2 Definitions.**

As used in this Part, the below terms shall have the following meaning:

- (a) Attorney General: The Attorney General of the State of New York or the designee of the Attorney General.
- (b) Board: The State of New York Workers’ Compensation Board.
- (c) Certification: A mechanism for validating an individual’s professional knowledge, qualifications, and expertise in the workplace safety, health, environmental, return to work, or drug and alcohol prevention fields.
- (d) Certified: A designation provided by the Commissioner or his or her designee, to an individual possessing the necessary knowledge, qualifications and

expertise to evaluate any one or more of the Workplace Safety and Loss Prevention Incentive Programs.

- (e) Chair: The Chair of the State of New York Workers' Compensation Board or the designee of the Chair.
- (f) Commissioner: The Commissioner of the Department of Labor of the State of New York or the designee of the Commissioner.
- (g) Consultation: The process by which an employer receives recommendations on any one or more of the Workplace Safety and Loss Prevention Incentive Programs from a Certified Specialist or Department employee.
- (h) Department: The Department of Labor of the State of New York.
- (i) Drug and Alcohol Prevention Program: A program containing the elements set forth in Section 60-1.14.
- (j) Emergency Situation: An unforeseen single event or combination of events that calls for immediate action to prevent, or contain injury or illness to person(s) or damage to property.
- (k) Evaluation: An appraisal of a proposed or existing Workplace Safety and Loss Prevention Incentive Program to determine or assess its compliance with this Part and its effectiveness.

- (l) Group self-insurer: An association operating in accordance with section 50(3-a) of the Workers' Compensation Law, to assume the workers' compensation liabilities of each associated member.
- (m) Incentive: A credit or credits in workers' compensation premiums provided to insured employers or a reduction in the security deposit required of individually self-insured employers or a credit against the contribution of a member of a group self-insurer if authorized by the Chair and in accordance with the limitations set by the Chair granted in exchange for implementing an approved Workplace Safety and Loss Prevention Incentive Program (WSLPIP).
- (n) Monitoring: Oversight and/or inspection of an approved Workplace Safety and Loss Prevention Incentive Program conducted by the Department to determine whether an approved Workplace Safety and Loss Prevention Incentive Program (WSLPIP) complies with this Part.
- (o) Qualified Organization: A business, labor or professional group with expertise in the workplace safety, health, environmental, return to work, or drug and alcohol prevention fields.
- (p) Return to Work Program: A program containing the elements set forth in Section 60-1.15.

- (q) Review: The Department's examination of an employer's written application and supporting materials to assess whether the employer's proposed program(s) comply(ies) with this Part.
- (r) Safety Incentive Program: A program containing the elements set forth in Section 60-1.13.
- (s) Specialist: An individual Certified by the Department to design, or perform Evaluations of one or more of the three Workplace Safety and Loss Prevention Incentive Programs.
- (t) Superintendent: The Superintendent of the New York State Insurance Department or the designee of the Superintendent.
- (u) Verification: A statement made by an authorized agent of an employer under the penalty of perjury on a form established by the Department that representations regarding the employer's Workplace Safety and Loss Prevention Incentive Program are true and accurate and that the employer's program(s) meet(s) the applicable requirements established by this Part.
- (v) Workplace Safety and Loss Prevention Incentive Program (WSLPIP): A program that meets the requirements of any one or more of the following: (1) a Safety Incentive Program; (2) a Drug and Alcohol Prevention Program; and, or (3) a Return to Work Program.

### **§60-1.3 Intent and Purpose of this Rule.**

(a) The intent of this Rule is to: (1) reduce occupational injuries and illnesses in the workplace; (2) return injured or ill employees to work; and (3) reduce workers' compensation costs for employers.

(b) The purpose of this Rule is to set forth: (1) the procedures, including the application process, that must be followed in order for an employer to receive the Department's approval of a WSLPIP; (2) the minimum requirements for an acceptable Safety Incentive Program, Drug and Alcohol Prevention Program and Return to Work Program; and (3) the basic educational and/or professional work experience required of an individual to be Certified as a Specialist.

(c) The employer has the option to use its own resources to establish a WSLPIP that complies with this Rule, adopt a model program deemed by the Department to comply with this Rule, or use a Specialist or the Department's trained personnel to assist in establishing a WSLPIP that complies with this Rule.

(d) To ensure that the employer's WSLPIP complies with this Rule, each WSLPIP must undergo a Consultation and Evaluation by a Specialist or the Department, and a written report, based on the Evaluation, must accompany each initial and renewal application for the Incentive.

### **§60-1.4 Eligibility.**

(a) An employer insured by the New York State Insurance Fund (except for an employer who is a current State Insurance Fund policy holder in a recognized safety group) or by any other authorized insurer that issues policies of workers' compensation insurance shall be eligible for the WSLPIP if :

(1) The employer pays annual workers' compensation insurance premiums of at least five thousand dollars; and

(2) The employer's workers' compensation experience rating is at or below 1.20 for the year preceding the employer's application to the Department and the years in which the credit is applied for and approved by the Department; and

(3) The employer implements any one or more of the following programs as recommended by a Specialist or the Department, provided, however, that such program(s) shall comply with all requirements set forth in this Part:

(i) a Safety Incentive Program;

(ii) a Drug and Alcohol Prevention Program; and

(iii) a Return to Work Program.

(b) An individually self-insured employer shall be eligible for a reduction in the security deposit as required by subdivision three of Section 50 of the Workers' Compensation Law if:

(1) The individually self-insured employer implements any one or more of the following programs as recommended by a Specialist or the Department, provided, however, that such program(s) shall comply with all requirements set forth in this Part:

- (i) a Safety Incentive Program;
- (ii) a Drug and Alcohol Prevention Program; and
- (iii) a Return to Work Program.

(c) A member of a group self-insurer shall be eligible for a credit against its contributions if:

- (1) The Chair authorizes such credit;
- (2) The credit is in accordance with limitations set by the Chair and contemplated in the rate plan submitted by the group self-insurer; and
- (3) The member implements any one or more of the following programs as recommended by a Specialist or the Department, provided, however, that such program(s) shall comply with all requirements set forth in this Part:

- (i) a Safety Incentive Program;
- (ii) a Drug and Alcohol Prevention Program; and
- (iii) a Return to Work Program.

(d) The employer must comply with the procedures set forth in this Part.

(e) No employer required to implement a mandatory safety and loss prevention program pursuant to Section 134(1) of the Workers' Compensation Law is eligible for a WSLPIP Incentive until that employer has fully complied with provisions of that Section, has met the criteria for eligibility to participate in the WSLPIP, and has implemented a WSLPIP as set forth in this regulation.

(f) Employers that have already implemented a safety incentive program, a drug and alcohol prevention program, and/or a return to work program may apply for an Incentive provided that such preexisting program(s) conform(s) to these regulations. Programs implemented and in place prior to these regulations must go through the same Consultation, Evaluation, application and Review process as new programs.

### **§60-1.5 Workplace Safety and Loss Prevention Incentive Program (WSLPIP) Consultation and Evaluation**

(a) To develop and establish a WSLPIP that meets the requirements set forth in these regulations, the employer has the option to use its own resources to establish a WSLPIP, adopt a model program provided by the Department, or hire a Specialist or the Department's personnel to assist in establishing a WSLPIP.

(b) Once the employer has implemented its WSLPIP and chooses to seek an Incentive, the employer's WSLPIP shall undergo a Consultation and Evaluation

that shall include an analysis of the particular WSLPIP(s) established for each workplace to determine whether the WSLPIP complies with these regulations. The Specialist's Evaluation report made in accordance with Section 60-1.16 (an "Evaluation Report"), shall accompany the employer's application to the Department.

(c) The employer's WSLPIP shall undergo a Consultation and Evaluation performed by a designated employee of the Department or a Specialist prior to each application for renewal. The Specialist's Evaluation Report shall accompany the employer's renewal application to the Department.

(1) The employer's staff may seek Certification as a Specialist, and such staff may conduct the Consultation and Evaluation.

(2) The Consultation and Evaluation may be conducted by a Specialist who works for the employer's insurer or for the applicable group self-insurer.

(d) The Department shall charge a fee of \$100.00 per hour for the Consultation and Evaluation of each WSLPIP performed by the Department, except that the Department's maximum fee for the Consultation and Evaluation of the Drug and Alcohol Prevention Program and Return to Work Program shall be \$300 for each program. When Department personnel are utilized for the initial and/or renewal Consultation and Evaluation, the employer's application fee to the Department is

waived because the Consultation and Evaluation fees would incorporate the application process.

(e) The Consultation and Evaluation shall be conducted using criteria developed by the Department as set forth by this Rule. The Department shall develop criteria for the Drug and Alcohol Prevention Program in consultation with the Office of Alcoholism and Substance Abuse Services.

(f) If the employer seeks an Incentive for more than one WSLPIP, the employer may undergo a Consultation and Evaluation of all of its programs at the same time in order to minimize costs.

#### **§60-1.6 Initial Application and Approval Procedures**

(a) An employer must apply to the Department to receive an Incentive for each WSLPIP on a form developed by the Department and the application shall contain the information required by Subsection (d) of this Section.

(1) An insured employer shall apply no later than 120 days prior to the expiration of the employer's annual policy renewal date in order to receive the credit for the next annual policy period.

(2) An individually self-insured employer shall apply no later than 120 days prior to the end of the calendar year in order to receive a reduction in security deposit for the next calendar year.

(3) A member of a group self-insurer shall apply no later than 120 days prior to the end of the group's fiscal year in order to receive a credit, if authorized by the Chair and in accordance with the limitations set by the Chair, for the next fiscal year.

(b) The employer shall use a Specialist or a Department employee to perform the Evaluation of its program(s) prior to application.

(c) A \$100.00 non-refundable application fee must accompany each application for each implemented program. Employers with an annual premium or contribution rate of less than \$10,000 shall pay a discounted rate of \$50 for each application for each program implemented. Checks must be made payable to the "Commissioner of Labor."

(d) The employer's WSLPIP application shall include the following information:

(1) The particular WSLPIP implemented;

(2) A copy of the final and operative WSLPIP documents and a description of the means by which the particular WSLPIP was implemented;

(3) The date on which the WSLPIP began;

(4) The name, address, and contact information of the employer's designated contact for each implemented program;

- (5) The name, address, and contact information for all New York locations where the WSLPIP has been implemented by the employer and Federal Employer Identification Number (“FEIN”);
- (6) The number of employees and the employer’s North American Industry Classification System (“NAICS”) code classification at each location where the WSLPIP has been implemented;
- (7) The names, addresses, and contact information of the individual(s) designated to represent employees, or the recognized representative of each collective bargaining unit, where applicable, at the location(s) where the WSLPIP has been implemented;
- (8) The name, address, and contact information of the insured employer’s workers’ compensation insurer, the policy number to which the Incentive is to be applied, and the annual policy period, or the individually self-insured employer’s workers’ compensation carrier identification number, or the name, address and contact information of the applicable group self-insurer, and the annual coverage period;
- (9) The insured employer’s most recent experience rating and current annual workers’ compensation premium, or the current amount of the security deposit that the Board determines that the individually self-insured

employer is required to pay, or the current amount of the annual contribution the member must pay for membership in the group;

(10) The name, address and Certification number of the Specialist or the Department employee who performed the Consultation and Evaluation of the WSLPIP as required in Section 60-1.5;

(11) A copy of the Evaluation Report completed in accordance with Section 60-1.16; and

(12) A Verification.

(e) Once the employer's WSLPIP is approved by the Department, the Department shall notify the employer and issue the employer a certificate of approval indicating that the WSLPIP approval shall be in effect for three years. The Department shall make a copy of the notification available to the Superintendent, and the Board.

(f) Upon receipt of approval from the Department, the insured employer must send a copy of the Department's certificate of approval to the employer's workers' compensation insurance carrier so that the insurance carrier will provide the credit(s). Individually self-insured employers must send a copy of the Department's certificate of approval to the Board so that the Board can implement the appropriate reduction in the individually self-insured employer's security deposit. Members of a group shall send a copy of the Department's certificate of

approval to the Board so that the Board can implement the appropriate credit against the employer's contributions.

(g) Once a WSLPIP Incentive is provided to an employer, the employer must keep records and reports as required by Section 60-1.8 and maintain a WSLPIP that complies with this Part.

### **§60-1.7 Renewal Application and Approval Procedures**

(a) At the end of the initial three year approval period, if the employer seeks to renew the Incentive, an employer must apply to the Department for a renewal of the Incentive on a renewal application form developed by the Department that provides information on the implementation of the approved program. The renewal application shall contain the information required by Section 60-1.6.

(1) The insured employer shall apply for renewal no later than ninety (90) days prior to the expiration of the employer's annual policy renewal date in order to receive the credit for the next annual policy period.

(2) An individually self-insured employer shall apply no later than ninety (90) days prior to the end of the calendar year in order to receive a reduction in security deposit for the next calendar year.

(3) Members of a group self-insurer shall apply no later than ninety (90) days prior to the end of the group's fiscal year in order to receive a credit against

contributions, if authorized by the Chair and in accordance with the limitations set by the Chair, for the next coverage period.

(b) A \$75.00 non-refundable fee must accompany each renewal application for each program implemented. Employers with an annual premium or contribution rate of less than \$10,000 shall pay a discounted rate of \$50 for each renewal application for each program implemented. Checks must be made payable to the “Commissioner of Labor.”

(c) The employer shall use a Specialist or a Department employee to perform an Evaluation of its WSLPIP prior to application for renewal. When Department personnel are utilized for the renewal Consultation and Evaluation, the employer’s renewal application fee to the Department is waived.

(d) The application for renewal must include the following information:

- (1) an Evaluation Report by the Specialist or Department employee;
- (2) the employer’s annual WSLPIP report for the full second year and the first six months of the third year of the current approval period; and
- (3) the employer’s Verification that the WSLPIP(s) remain(s) in effect and continue(s) to comply with these regulations.

(e) The WSLPIP report and Verification shall comply with the procedures in Section 60-1.8.

(f) Once the employer's WSLPIP renewal application is approved by the Department, the Department shall notify the employer and issue the employer a certificate of approval indicating that the WSLPIP approval for renewal shall be in effect for three years. The Department shall make a copy of the notification available to the Superintendent, and the Board.

(g) Upon receipt of approval by the Department, the insured employer shall send a copy of the certificate of approval for renewal to the employer's workers' compensation carrier. Employers who are individually self-insured shall send a copy of the certificate of approval to the Board. Members of a group self-insurer shall send a copy of the certificate of approval to its group self-insurer and to the Board.

(h) Once a WSLPIP Incentive is provided to an employer, the employer must keep required records and reports pursuant to Section 60-1.8 and maintain a WSLPIP that complies with this Part.

#### **§60-1.8 Continuation of the Incentive during the Approval Period**

(a) In order for the employer to receive the Incentive in the second and third year of the initial and renewal approval periods, an employer shall submit to the Department an annual WSLPIP report and Verification that its approved and

implemented WSLPIP continues to comply with this Part on a form developed by the Department.

(1) Insured employers shall send each annual WSLPIP report and Verification to the Department no later than ninety (90) days prior to its annual policy renewal date.

(2) Individually self-insured employers shall send each annual WSLPIP report and Verification to the Department no later than ninety (90) days prior to the end of the calendar year.

(3) Members of a group self-insurer shall send each annual WSLPIP report and Verification to the Department no later than ninety (90) days prior to the end of the group's fiscal year.

(b) Each annual WSLPIP report shall include:

(1) Data for the previous policy year and, at a minimum, the first six months of the current policy year;

(2) Information on claim frequency and claim severity by employment class, and by type of injury (such as death, permanent total disability (PTD), permanent partial disability (PPD), temporary total disability (TTD), medical only), and changes in the employer's experience rating modification factor;

(3) A Verification that the employer has complied with all requirements of these regulations concerning the participation of employee representatives, including the recognized representative of each collective bargaining unit; and

(4) For a Safety Incentive Program, the employer must provide a description of how the program improved workplace safety, including a description of any measures taken to reduce or eliminate injuries or illnesses. The description must also include:

(i) new or improved safety measures implemented as a result of the program;

(ii) investments in safety equipment;

(iii) how the program mitigated the severity and frequency of accidents occurring within the previous and current policy year; and

(iv) the training and education provided to employees and supervisors about the program.

(5) For a Drug and Alcohol Prevention Program, the employer must provide a description of how the program reduced workplace injuries. This information must comply with all applicable privacy laws. The description must also include:

(i) the steps taken to minimize injuries related to drug and alcohol abuse;

- (ii) the number of individuals identified with drug and alcohol abuse problems, and the assistance, if any, provided to them; and
- (iii) the training and education provided to employees and supervisors about the program.

(6) For a Return to Work Program, the employer must provide a description of how the program facilitated the return to work of injured employees. The description must also include the following:

- (i) the lost time incurred for each injury;
- (ii) the number of employees who returned to work pursuant to the program after suffering a workplace injury or illness;
- (iii) a description of any accommodations made which allowed injured workers to return to work under the program;
- (iv) the number of employees who could not return to work after suffering a workplace injury; and
- (v) the training and education provided to employees and supervisors about the program.

(c) Once the employer's annual WSLPIP report and Verification have been Reviewed and approved by the Department, the Department will notify the employer. The Department shall make a copy of the notification available to the Superintendent and the Board.

(d) The insured employer shall send a copy of the Department's written notification of Review and approval to the employer's workers' compensation carrier. Employers who are individually self-insured shall send a copy of the Department's written notification of Review and approval to the Board. Members of a group self-insurer shall send a copy of the Department's written notification of Review and approval to the Board.

#### **§60-1.9 Issuance of the Incentive**

(a) The Incentive provided to insured employers for the implementation and renewal of each WSLPIP and the method of calculation shall be in accordance with regulations established by the Superintendent pursuant to Section 134 (6) of the Workers' Compensation Law.

(b) The reduction in the security deposit provided to individually self-insured employers for the implementation and renewal of each WSLPIP shall be pursuant to Section 134 (7) of the Workers' Compensation Law.

(c) The credit against the contribution paid by a member of a group self-insurer for the implementation and renewal of each WSLPIP shall be pursuant to Section 134 (7) of the Workers' Compensation Law.

#### **§60-1.10 Approval, Monitoring and Appeal**

(a) Applications for Incentives may be denied, revoked, or disallowed based upon a determination by the Department that the employer failed to implement and/or maintain a WSLPIP that complies with this Part.

(1) Within ten (10) business days of making a determination that an employer's WSLPIP is deficient or in some way in violation of these regulations, the Department shall inform the employer in writing of the reason(s) for the adverse determination.

(2) The employer may demonstrate to the Department that it has corrected all deficiencies within thirty (30) days of the notice of deficiency, thereby avoiding any need for adverse action against the employer under these regulations.

(3) If the employer has not corrected all deficiencies within thirty (30) days from the date of the notice of deficiency, the Department shall inform the employer, the employer's insurer and the Superintendent that the employer's Incentive has been denied, revoked, or suspended. If the employer is individually self-insured or a member of a group self-insurer, the Department shall also inform the Board. The Department shall also advise the Superintendent and the Chair to take appropriate action within his or her authority.

(4) In determining the sanction to be imposed, the Department will consider factors including:

- (i) the number of years in business;
- (ii) the size of the employer as measured by the dollar volume of annual gross sales and the number of employees;
- (iii) the level of cooperation with the Department;
- (iv) the gravity of the violation(s); and
- (v) whether there has been a previous violation of any New York State Law or Regulation.

(b) Any approved Workplace Safety and Loss Prevention Incentive Program shall be subject to Monitoring by the Department. The Monitoring may include responding to complaints, onsite visits, discussions with employee representatives, including designated employee representatives or the recognized representative of each collective bargaining unit where applicable, and review of all records and documents requested by the Department.

(c) If an employer's application is denied, the employer may commence a proceeding to appeal such denial pursuant to Article 78 of the civil practice law and rules.

**§60-1.11 Employer's Duties and Responsibilities.**

In addition to all other duties and responsibilities of the employer set forth elsewhere in this Rule, the employer shall have the following additional duties and responsibilities:

(a) The employer shall post the certificate of approval issued by the Department for each WSLPIP prominently in all work locations as long as the WSLPIP approval is in effect.

(b) An employer shall provide access to personnel and facilities and make available the records and documents required to carry out this Part, such as the program application, policy statement, training outline, certificate of approval, and required reports, unless otherwise restricted or prohibited by the Health Insurance Portability and Accountability Act (HIPAA) or other federal or state laws governing confidentiality or personal privacy.

(1) An insured employer shall provide such access to the Specialist, the Department, the Superintendent, the Board, the designated employee representatives and/or the recognized representative of each collective bargaining unit where applicable, and the employer's insurer.

(2) An individually self-insured employer shall provide such access to the Specialist, the Department, the Board, and the designated employee representatives and/or the recognized representative of each collective bargaining unit, where applicable.

(3) A member of a group self-insurer shall provide such access to the Specialist, the Department, the Board, the group, and the designated employee representatives and/or the recognized representative of each collective bargaining unit, where applicable.

(4) Failure to allow such access to any of the parties may result in a loss or suspension of the WSLPIP Incentive.

(c) A material misrepresentation to the Department regarding the status of an employer's WSLPIP may result in the revocation or suspension of the approval of the Incentive and the referral of the matter to the Superintendent, the Chair of the Board, and/or the Attorney General. Misrepresentation(s) by the employer may subject the employer to penalties by the Superintendent, the Chair of the Board, and/or the Attorney General.

#### **§60-1.12 Insurer's Duties and Responsibilities**

(a) The insurer must apply each Incentive that is granted by the Department and the Superintendent as of the employer's next renewal policy period. Failure to apply the approved Incentive may subject the insurer to penalties issued by the Superintendent. The implementation of the Incentive for individually self-insured employers will be subject to the annual renewal process required by Section 315 of Title 12 NYCRR. The implementation of the Incentive for members of a group

self-insurer will be subject to the annual renewal process required by Section 317 of Title 12 NYCRR.

(a) If an employer obtains workers' compensation insurance from a different insurer than the insurer that originally provided the employer its WSLPIP Incentive, the new insurer shall continue to provide the required Incentive in accordance with the regulations established by the Superintendent pursuant to Section 134(6) of the Workers' Compensation Law.

(c) The insurer shall report annually to the Superintendent. Failure to report may subject the insurer to penalties issued by the Superintendent. The insurer's report shall include the following information and any other information that the Superintendent deems necessary to evaluate the premium credit(s) under the WSLPIP:

(1) the total number of employers that it insured during the prior year that received a premium credit or credits under the WSLPIP and the total dollar amount of premium credits granted to these employers;

(2) the total number of employers that it insured during the prior year that received a premium credit only for the Safety Incentive Program and the total dollar amount of premium credits granted to these employers for the Safety Incentive Programs;

(3) the total number of employers that it insured during the prior year that received a premium credit only for the Drug and Alcohol Prevention Program and the total dollar amount of premium credits granted to these employers for the Drug and Alcohol Prevention Programs;

(4) the total number of employers that it insured during the prior year that received a premium credit only for the Return to Work Program and the total dollar amount of premium credits granted to these employers for the Return to Work Programs; and

(5) the total number of employers that it insured during the prior year that received multiple credits for participation in more than one program under the WSLPIP and the total dollar amount of premium credits granted to these employers for multiple programs.

(d) For individually self-insured employers, the Chair of the Board shall maintain the information required by this Part and provide it to the Superintendent upon request. However, for purposes of this section, an individually self-insured employer's "premium credit" refers to the employer's security deposit adjustment, if applicable.

(e) For members of a group self-insurer, the groups shall maintain the information required by this Part for its employer members and provide it to the Superintendent

and Chair of the Board upon request. However, for purposes of this section, an employer's "premium credit" refers to the credit the employer receives against its contributions that has been authorized by the Chair and is in accordance with the limitations set by the Chair.

**§60-1.13 Safety Incentive Program.**

(a) An acceptable Safety Incentive Program seeks to identify, prevent, evaluate, and control workplace hazards. A Safety Incentive Program shall be documented in writing and shall, at a minimum:

(1) Establish policies, procedures, and practices that:

(i) identify, uncover, and recognize occupational safety and workplace health hazards;

(ii) minimize or eliminate known or suspected occupational safety and workplace health hazards;

(iii) protect employees from occupational safety and workplace health hazards;

(iv) ensure management's role and leadership in promoting workplace safety and health throughout the organization through the maintenance and promotion of the policies and procedures designed to improve workplace safety and health; and

(v) communicate the nature of the health hazard to employees.

(2) Communicate the goals of the Safety Incentive Program and the mechanisms which will be utilized to achieve the goals so that all personnel will understand that management is committed to workplace safety.

(3) Assign and communicate roles and responsibilities for all aspects of the Safety Incentive Program to managers, supervisors, and employees. The assignment of responsibilities shall be accomplished through written notification. The notification shall also articulate the means by which managers, supervisors and employees will be held accountable for implementing the Safety Incentive Program. The written notification must provide a designated contact or contacts who will be available to answer questions regarding any practice or procedure implemented by the employer.

(4) Establish a mechanism to conduct on-going workplace safety inspections so that new or previously-identified workplace hazards may be minimized or eliminated through the use of safe work practices, investment in equipment, engineering, or administrative controls. On-going safety inspections shall be conducted with a frequency necessary to be effective.

(5) Ensure that all workers at every site covered by the Safety Incentive Program are provided with appropriate and effective safety protections, including appropriate personal protective equipment that is properly used and maintained in good condition at all times.

(6) Provide for and encourage employee involvement in the structure and operation of the Safety Incentive Program to facilitate their commitment to achieving its goals and objectives. Employee involvement shall be accomplished through the designation of one or more employee representative(s) at each site where the Safety Incentive Program will be implemented or through the recognized representative of each collective bargaining unit, where applicable.

(7) Provide appropriate training for managers, supervisors, and employees that shall enable them to:

- (i) Accomplish the task and responsibilities assigned to them under the approved Safety Incentive Program;
- (ii) Recognize potential hazards;
- (iii) Maintain safety protection in the work area; and
- (iv) Reinforce employee safe work practices and the use of required protective measures,

(8) Provide a reliable procedure by which employees may notify management personnel, without fear of reprisal, of conditions that appear hazardous or are not in compliance with the policies of the Safety Incentive Program.

(9) Provide a reliable procedure to respond to safety and health hazards in a timely and appropriate manner and implement new or improved safety procedures that follow a hierarchy of controls.

(10) Investigate accidents to identify the root cause(s) of the hazard(s) and prevent reoccurrences.

(11) Provide a means to evaluate or analyze accident, injury, and illness trends or data over time in order to identify patterns and develop strategies for accident reduction and elimination. Such analysis should illustrate the effectiveness (or lack thereof) of any modification(s) to achieve the desired results.

(12) Address the impact of Emergency Situations on workplace safety and health.

(13) Develop written plans and procedures to enhance employee safety during Emergency Situations.

(14) Establish procedures for transmitting and enforcing new or improved safe work practices through training, positive reinforcement, and correction of unsafe performance.

(15) Ensure that hazard assessments are conducted whenever significant or dangerous new machinery, equipment, or technology is introduced into the

workplace or when working conditions materially change through new policies, procedures or processes.

(b) The final, approved Safety Incentive Program plan shall be provided to the designated employee representative(s) in each workplace location or to the recognized representative of each collective bargaining unit, where applicable, and shall be made available to all employees upon request.

#### **S60-1.14 Drug and Alcohol Prevention Program**

(a) A Drug and Alcohol Prevention Program identifies employees whose job performance is affected by drug and alcohol use and encourages those employees to use drug and alcohol abuse counseling and treatment services. A Drug and Alcohol Prevention Program informs employees of the dangers, to themselves and to others, of drug and alcohol abuse. The program employs cost effective, confidential, early intervention strategies designed to help employees with drug and alcohol problems that interfere with their ability to function on the job in a safe and effective manner.

(b) Services related to an approved Drug and Alcohol Abuse Prevention Program may be provided directly by the employer, jointly between the employer and the union that represents the employer's employees, through the union, or through a contract with an outside provider.

(c) To qualify for an Incentive, an employer's Drug and Alcohol Prevention Program shall be documented in writing and shall include, but not be limited to, the following elements:

(1) A policy statement in which the employer communicates to all levels of management and to all employees the intent and objectives of the program, including:

- (i) the problems which the program is designed to prevent;
- (ii) management's commitment to addressing those problems and to protecting the safety, health and well-being of all employees and individuals in the workplace;
- (iii) recognition that alcohol abuse and drug use pose a threat to workplace safety and health; and
- (iv) a clear message that use of alcohol and drugs in the workplace is prohibited.

(2) A confidential procedure for the timely identification and referral to counseling and treatment of employees with drug and alcohol problems that may affect job performance;

(3) Confidentiality for all who participate in the program and for the storage and handling of employee records;

- (4) Provisions for the involvement of employees in the structure and operation of the program. Such involvement shall be accomplished through the recognized representatives of each collective bargaining representative, where applicable;
- (5) An assurance that collective bargaining rights, where applicable, are not diminished by the program;
- (6) Specific procedures to facilitate program implementation including case monitoring and follow-up services;
- (7) Written plans and procedures to ensure employee safety during Emergency Situations related to drug and alcohol abuse;
- (8) An orientation program for new supervisors and employees that communicates the intent and specific elements of the program;
- (9) A training program for supervisors and employees to develop an awareness and understanding of the problems associated with the abuse of drugs and alcohol in the workplace, the responsibilities of all affected supervisors and employees in the implementation of the program, the rights of all employees, and the procedures for the re-entry into the workforce.
- (10) An effectiveness analysis of the program and its operations;
- (11) Strategies for maintenance and promotion of the program: and

(12) Designation of a contact at the employer for employees to use when seeking assistance under the employer's Drug and Alcohol Prevention Program.

(d) The final, approved Drug and Alcohol Prevention Program plan shall be provided to the designated employee representative(s) in each workplace location or to the recognized representative of each collective bargaining unit, where applicable and shall be made available to all employees upon request.

#### **S60-1.15 Return to Work Program**

(a) An acceptable Return to Work Program facilitates an employee's return to work as soon as medically possible after a job-related injury or illness. A Return to Work Program provides fair and consistent practices for accommodating the needs of employees who have become ill or injured on the job or have sustained a temporary or permanent partial disability covered by the Workers' Compensation Law in order for such employees to make a timely and safe return to work.

Nothing in these regulations precludes the employer from extending its Return to Work Program for an illness or injury not covered by the Workers'

Compensation Law. However, extending a Return to Work Program to injuries or illnesses not covered by the Worker's Compensation Law will not entitle the employer to an additional Incentive.

(b) Services related to a Return to Work Program may be provided directly by the employer, jointly between the employer and the union, through a union that represents the employer's employees, or through a contract with an outside provider.

(c) A Return to Work Program shall be in writing and shall include, but need not be limited to, the following elements:

- (1) An employer's statement of commitment to providing safe, gainful, and meaningful employment to employees as soon as medically possible following an on-the-job injury or illness;
- (2) A plan for communication with all parties including the injured worker, the medical provider, the collective bargaining representative, if any, the insurer, and the Board, in order to facilitate return to work. The communication must be made in accordance with applicable privacy laws;
- (3) A policy and procedure for returning injured workers to the workplace which is communicated to all employees and collective bargaining representatives in writing and in a timely manner;
- (4) Policies and procedures that focus on returning the employee to his or her pre-injury employment and accommodating the needs of that employee with regard to a new position at the employer, and which do not cause undue

hardship on the parties or violate an existing collective bargaining agreement;

(5) A policy and procedure for ensuring the involvement of the injured or ill employee in all aspects of the return to work process;

(6) A policy and procedure for ensuring the involvement of the recognized representatives of each collective bargaining unit, where applicable, in the Return to Work Program;

(7) A policy and procedure for ensuring that the injured employee's medical provider is involved in the return to work process and is given information which will assist in determining the injured worker's ability to return to the pre-injury job, a modified job, or a suitable alternative work assignment at the employer in a timely manner;

(8) A process for the development and implementation of a written individual return to work plan by the employer, the employee and the recognized collective bargaining representative, where applicable;

(9) A policy to return an injured worker to the pre-injury job at the appropriate time as soon as it is medically determined that the employee is capable of performing the essential duties of their pre-injury or pre-illness job;

- (10) A policy and procedure to make reasonable efforts to accommodate the worker's work-related injury or illness so that the post-injury job is consistent with the worker's functional abilities, with the goal of offering the employee alternative suitable and available work that is comparable in nature and earnings to the worker's pre-injury job;
- (11) A policy and procedure for referring an employee to a vocational assessment and for providing vocational services if the injured or ill employee cannot perform the essential duties of the pre-injury job or a suitable alternative job at the employer;
- (12) A procedure for monitoring the employee's progress, recovery, and return to work;
- (13) Strategies for maintenance and promotion of the program;
- (14) An evaluation component that includes realistic and measurable criteria to determine the appropriateness and effectiveness of the program and operations; and
- (15) Designation of a Return to Work Program contact at the employer for use by employees seeking to participate in the Return to Work Program.
- (d) The final, approved Return to Work Program plan shall be provided to the designated employee representative(s) in each workplace location or to the

recognized representative of each collective bargaining unit, where applicable, and shall be made available to all employees upon request.

**§60-1.16 Safety and Loss Management Specialist - Duties and Responsibilities.**

(a) A Specialist performing WSLPIP Consultations and Evaluations under this Rule, at a minimum, shall:

(1) Conduct an opening conference with the employer and employee representatives, including the recognized representative of each collective bargaining unit, where applicable, to discuss:

(i) The manner in which the Consultation(s) and Evaluation(s) will be conducted; and

(ii) The records and information required of the employer in order to allow the Specialist to perform the Consultation and Evaluation.

(2) Meet with employer and employee representatives, including the recognized representative of each collective bargaining unit, where applicable, to receive information and input relevant to the development of the program.

(3) Include, to the extent reasonably possible, an analysis of the historical loss and claim information associated with each site in the Consultation and Evaluation.

(4) Wherever industrial hygiene sampling is determined to be necessary during the conduct of the Consultation and Evaluation, conduct such sampling in accordance

with those sampling and analytical procedures generally recognized within the industrial hygiene profession, such as, but not limited to, the Chemical Information Manual OSHA CPL 2-2.43A. All sample analyses must be performed by a laboratory that has been accredited by the American Industrial Hygiene Association (AIHA) or certified by the New York State Health Department Environmental Laboratory Approval Program (ELAP).

(5) Conduct a closing conference with the employer and employee representatives, including the recognized representative of each collective bargaining unit, where applicable, to discuss the findings and recommendations for implementation of the WSLPIP.

(6) Prepare an Evaluation Report on a form developed by the Department and provide the report to the employer. The Specialist may include the Consultation and Evaluation findings from multiple sites in a single Evaluation Report.

(b) The Evaluation Report shall contain, at a minimum, the following:

(1) The name, address, and contact information of the Specialist performing the Consultation and Evaluation and, if the Specialist is not employed by the Department, the Certification number of the Specialist;

(2) The name, address, and contact information and FEIN of the employer for whom the report was prepared and the name, address, and contact

information of any employee representative that participated in the Consultation and Evaluation;

(3) The name and location of the worksite(s) at which the Consultation and Evaluation were performed;

(4) The date(s) on which the Consultation(s) and Evaluation(s) were conducted;

(5) The name and contact information of the employer's workers' compensation insurer and applicable workers' compensation policy number, or, in the case of individually self-insured employers, the name and contact information of the employer's self-insurance representative to the Board, or in the case of a member of a group self-insurer, the name and contact information of the member's group self-insurer;

(6) The activity or activities in which the employer is primarily engaged and a synopsis of the work operation(s);

(7) The number of all employees at each location and the employer's NAICS code job classification;

(8) A complete review of each of the required elements of the specific WSLPIP as set forth in Sections 60-1.13, 60-1.14, or 60-1.15 and an assessment of the employer's compliance with these requirements;

(9) Identification of and recommendations for the correction of all workplace safety and loss prevention issues or deficiencies noted during the WSLPIP Consultation and Evaluation; and

(10) A list of recommendations for the implementation of the employer's WSLPIP.

### **§60-1.17 Certification of Safety and Loss Management Specialists**

(a) A Specialist performing services identified in this Part shall be Certified by the Department.

(b) Designated Department employees are automatically Certified and shall not apply to the Department for Certification nor pay a Certification fee. An employee designated by the Department shall be in any of the Civil Service titles deemed appropriate by the Commissioner.

(c) A Specialist must possess at least one of the following qualifications to be eligible for Certification for the purpose of conducting a Consultation and Evaluation of a Safety Incentive Program under Section 60-1.13:

(1) Certification as a Certified Safety Professional (CSP) granted by the Board of Certified Safety Professionals (BCSP); or

(2) Certification as a Certified Industrial Hygienist (CIH) granted by the American Board of Industrial Hygiene (ABIH); or

(3) Certification as a Certified Safety Executive (CSE), Certified Safety Manager (CSM), or Certified Safety Specialist (CSS) granted by the World Safety Organization; or

(4) New York State license as a professional engineer, with three years of documented professional safety and health experience within the last ten years prior to the filing of the application for Certification; or

(5) A Bachelor of Science degree in industrial hygiene, safety, occupational safety and health, biology, chemistry, environmental health and science, physics, engineering, or a related field, with three years documented professional safety and health experience within the last ten years prior to the filing of the application for Certification; or

(6) An insurance professional with qualifications as an Associate in Loss Control Management or an Associate in Risk Management plus three years documented appropriate safety and loss prevention experience; or

(7) Five years of documented professional safety and health experience deemed acceptable to the Department within the last ten years prior to the filing of the application for Certification.

(d) A Specialist must possess at least at least one of the following qualifications to be eligible for Certification for the purpose of conducting a Consultation and Evaluation of a Drug and Alcohol Prevention Program under Section 60-1.14;

- (1) Five years of documented professional drug and alcohol prevention experience or employment as an addictions specialist for an organization certified or funded by the Office of Alcoholism and Substance Abuse Services to provide Chemical Dependence Treatment or Prevention within the last ten years prior to the filing of the application for Certification; or
- (2) A graduate degree and one or more years of documented professional experience in an area that is directly related to drug and alcohol prevention work such as psychology, social work, or counseling; or
- (3) Three or more years of documented professional experience and approval as a Credentialed Prevention Professional (CPP); or a Credentialed Prevention Specialist (CPS); or a Certified Employee Assistance Professional (CEAP) certified by the Employee Assistance Certification Commission; or
- (4) Three or more years of documented professional experience and approval as a Credentialed Alcoholism and Substance Abuse Counselor or a Credentialed Alcohol and Substance Abuse Prevention Professional and Prevention Specialist that is credentialed by the New York State Office of Alcoholism and Substance Abuse Services shall be considered to meet the definition of Specialist Certified by the Department under this Section; or

(5) An insurance professional with qualifications as an Associate in Loss Control Management or an Associate in Risk Management plus three years documented professional experience in evaluating drug and alcohol prevention programs.

(e) The Department will develop criteria for determining whether an applicant's experience is deemed acceptable for Certification as a Drug and Alcohol Prevention Specialist in consultation with the Office of Alcoholism and Substance Abuse Services.

(f) A Specialist must possess at least one of the following qualifications to be eligible for Certification for the purpose of conducting a Consultation and Evaluation of a Return to Work Program under Section 60-1.15:

(1) Five years of documented professional Return to Work experience deemed acceptable by the Department within the last ten years prior to the filing of the application for Certification. Such experience may include, but need not be limited to, provision of those services required to determine if an employee can reasonably be expected to return to suitable gainful employment and those services reasonably necessary to provide an employee with the opportunity to return to suitable gainful employment such as vocational and medical evaluation, counseling, job analysis, job

modification assistance, retraining including on-the-job training for alternative employment, formal training, academic instruction, and job placement assistance; or

(2) A qualified rehabilitation representative with three or more years of documented professional experience who is capable of developing and implementing a vocational rehabilitation plan and whose regular duties involve the evaluation, counseling, or placement of injured employees including, but not limited to, a Certified Case Manager (CCM), Certified Disability Management Specialist (CDMS), Certified Rehabilitation Counselor (CRC), Certified Vocational Evaluator (CVE), Certified Disability Management Specialist (CDMS), Licensed Rehabilitation Counselor (LRC), American Board of Vocational Experts (ABVE), or a Certified Registered Rehabilitation Nurse (CRRN); or

(3) A graduate degree from an accredited institution plus one year of documented professional experience in a human service field specializing in vocational rehabilitation, psychology, vocational counseling, or an equivalent and one or more years experience in such areas as vocational counseling of industrially injured employees, assessment, functional

capacity measures, psychological testing and measurement, job analysis, job placement, and job surveys; or

(4) A vocational case manager with a degree plus three years of documented professional experience in counseling and rehabilitation, disability management, case management, and return to work strategies; or

(5) An insurance professional with qualifications as an Associate in Loss Control Management or an Associate in Risk Management plus three years documented professional experience in return to work practices.

(g) An individual, who has received Certification under Section 59-1.12 of the Labor Law and has maintained the Certification required by the Department, will be deemed qualified to provide the required Consultation and Evaluation of Safety Incentive Programs under Section 60-1.13. Such individuals will be required to notify the Department of their intent to perform Specialist services under Section 60-1.13 of this Rule. In addition, persons Certified under Section 59-1.12 may receive Certification to perform the required Consultations and Evaluations for the Drug and Alcohol Prevention and Return to Work Programs by filing a request with the Department to review their qualifications to perform Consultations and Evaluations under Sections 60-1.14 and 60-1.15.

(h) For the purposes of the experience qualification set forth in this Section, "professional experience" is work experience which includes analysis, synthesis, design, investigation, planning, communication, evaluation, and implementation of safety and health, drug and alcohol prevention, or return to work strategies.

(i) A Specialist who performs WSLPIP Consultations and Evaluations, designs WSLPIPs or Reviews functions set forth in this Rule shall limit his or her activities under the Rule to the area(s) of their expertise Certified by the Department.

(j) All applications for Certification as a Specialist shall be submitted to the Department in writing on forms provided for that purpose and shall be accompanied by any other information or documentation deemed necessary by the Department for the purposes of Certification. All applications shall be accompanied by a non-refundable application fee of \$100 made payable to the "Commissioner of Labor." If the applicant is approved by the Department, the non-refundable application fee of \$100 will be applied to the Certification fee.

(k) The Department shall notify the applicant in writing of the issuance or denial of the Certification or of the need for further information from the applicant in order to process the application. The approval for Certification shall be in effect for three years. Notification of denial of an application shall set forth the grounds for such denial.

(l) Upon approval of the application for Certification, an applicant shall be assessed a non-refundable Certification fee of \$800 by the Department. Any applicant who is a member of a Qualified Organization that has more than three Specialists who are currently Certified, or applying for Certification or Recertification under this Rule shall be assessed a discounted non-refundable Certification fee of \$600.

(m) When an individual applies for and is granted more than one Certification under this Rule, the fee for each additional Certification shall be \$200.

(n) A Specialist must apply for Recertification every three years. There shall be a \$50 non-refundable application fee for each Recertification. If the applicant is approved by the Department, the non-refundable application fee of \$50 will be applied to the Recertification fee.

(o) Specialists approved for Recertification will be assessed a Recertification fee of \$600. The discounted Recertification fee for a Specialist who is a member of a Qualified Organization that has more than three Specialists who are currently Certified or applying for Certification or Recertification under this Rule shall be \$400. When any Specialist applies for and is granted more than one Recertification under this Rule, the fee for each additional Recertification shall be \$100.

(p) A Specialist who applies for Recertification must advise the Department of any circumstance which has occurred within the last three years which would disqualify the Specialist from Recertification pursuant to the criteria set forth in this Rule.

(q) A Specialist's Certification and Recertification may be denied, suspended or revoked by the Department upon a determination by the Department that:

(1) The Specialist's Consultation, Evaluation analysis, or development of the WSLPIP is in conflict with generally recognized practices that are applicable to the worksite; or

(2) The Specialist knowingly included false or misleading information in his/her application materials for Certification or Recertification or in any report required by this Rule; or

(3) The Specialist does not meet the qualifications for Certification set forth in this Rule; or

(4) The Specialist engaged in improper behavior or conduct calling into question his or her integrity or competence.

(r) If after an investigation and formal hearing, the Department finds that a Specialist's Certification should be revoked or suspended, the Department shall inform the Specialist in writing, setting forth the reasons for the determination.

(s) A Specialist's Certification which has been suspended or revoked may be reinstated under the following circumstances:

(1) If the revocation or suspension was premised upon a failure of the Specialist to meet the qualifications for Certification set forth in Section 60-1.17 of this Rule, upon a demonstration by the Specialist that those qualifications have been met.

(2) If the revocation or suspension was premised upon findings described in subdivision (3) of paragraph (p) of this Section, upon the Department's Review and approval of the re-application for such Certification by the individual. Such re-application may be submitted no sooner than thirty (30) days prior to the expiration of the period of suspension or revocation established by the Department.

(t) A Specialist applying for reinstatement of Certification shall be subject to the same procedures as those which pertained to application for the original Certification, except that in the event that Certification is reinstated within the period of time during which it would have been valid but for its revocation or suspension, the Certificate holder shall not be required to pay a new Certification or application fee for such reinstated Certification.

### **§60-1.18 Variances**

Variations from the provisions of this Rule may be granted in accordance with Article 2, Section 30 of the Labor Law.

### **§60-1.19 Severability**

If any provision of this Rule or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Rule which can be given effect without the invalid provisions or applications and to this end the provisions of this Rule are declared to be severable.

### **§60-1.20 Applicability of other State and Federal Regulations.**

Nothing contained in this Rule shall be read or applied in such a manner as to abrogate or otherwise limit the responsibility of an employer subject to this Rule to comply with all requirements set forth in State and Federal safety and health standards to which the employer would otherwise be subject, nor shall any provision of this Rule be read or applied in such a manner as to abrogate or otherwise limit the liability of such employer to fines or other penalties to which it would otherwise be subject for failure to comply with such Rules and Regulations.