



Are North Carolina Employers Required to Have a Written Safety and Health Program?

Insights

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North Carolina law requires employers with a workers' compensation experience rate modifier ("ERM") of 1.5 or higher to "establish and carry out a safety and health program to reduce or eliminate hazards and to prevent injuries and illnesses to employees." Not just any program, however, will comply with the statutory requirements.

What Is an ERM?

ERMs provide a comparison of an employer's claim history compared to other businesses in the same industry. An ERM of 1.0 is average. Rates higher than 1.0 indicate that the employer's safety record is worse than average, and those below 1.0 suggest that the employer's safety record is better than average. Not only do government agencies, like the Department of Labor, analyze this number, so do insurance companies. Higher ERMs may significantly impact insurance rates.

The Company's ERM is Higher than 1.5. What happens next?

When a North Carolina employer's ERM is higher than 1.5, the NC Department of Labor will send a letter demanding that the employer prove its compliance with additional safety-centric obligations imposed by law. These obligations include adopting a written safety and health plan and may require the creation of a safety committee.

The written safety and health plan must consist of at least nine sections, including methods and procedures for:

- (1) identifying, evaluating, and documenting safety and health hazard;
- (2) correcting identified safety and health hazards;
- (3) investigating work-related fatalities, injuries, and illnesses;
- (4) providing occupational safety and health services, including emergency response and first aid procedures;
- (5) ensuring employee participation in the implementation of the safety and health program;

- (6) responding to the recommendations of the safety and health committee;
- (7) providing safety and health training and education to employees and to members of any safety and health committee;
- (8) the designation of a representative of the employer who has the qualifications and responsibility to identify safety and health hazards and the authority to initiate corrective action; and
- (9) at multiemployer worksites, implementing procedures for each employer to protect employees at the worksite from hazards under the employer's control, including procedures to provide information on safety and health hazards to other employers and employees at the worksite.

Employers that have 11 or more employees must also create an employee safety and health committee to address safety and health considerations. North Carolina law also imposes additional training obligations on these employers.

Are There Any Exceptions?

Companies providing temporary help services are currently exempt from the statutory requirements; however, employee leasing companies are not. Additionally, the Commissioner of Labor may modify the requirements if she determines that “in light of the nature of the risks faced by the employees of these employers, such a modification would not reduce the employees’ safety and health protection.”

What If the Company Doesn't Respond?

Compliance with the statutory requirements may be onerous and burdensome for an employer. However, penalties may be assessed for a failure to comply. The North Carolina Department of Labor’s Field Operations Manual states that the commissioner may levy a civil penalty for an employer’s failure to follow the requirements to establish compliant programs and committees. The penalties depend on the size of the company, ranging from a maximum penalty of \$2,000 for employers with 10 or less employees up to a maximum penalty of \$25,000 for employers with 101 or more employees.

If you receive a letter from the NC Department of Labor referencing an ERM of 1.5 or more, you should carefully review your obligations to determine whether these additional obligations apply and seek counsel for assistance.

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Travis W. Vance
Regional Managing Partner
704.778.4164
Email

Service Focus

Workplace Safety and Catastrophe Management