

4167-5-02

**Undue hardship.**

- (A) In the event that a rule or order issued by the superintendent would cause undue hardship upon a public employer, the employer may request an exclusion from such a rule or order unless an action is required to prevent imminent danger of death or serious harm to a public employee.
- (B) An exclusion request on the basis of an undue hardship may not be made on behalf of a group of public employers.
- (C) An exclusion request on the basis of an undue hardship may be granted by the superintendent when there is not an imminent danger of death or serious harm to a public employee and any requirement imposed under the provisions of section 4167.01 of the Revised Code or a rule or order issued thereunder would require a public employer to take action with significant difficulty or expense when considered in light of, but not limited to, all of the following factors:
- (1) The nature and cost of the action required by a rule or an order issued under this chapter;
  - (2) The overall financial resources of the public employer;
  - (3) The number of persons employed by the public employer at the particular location where the action may be required;
  - (4) The effect on expenses and resources or the impact otherwise of the action required upon the operations of the public employer at the location where the action may be required;
  - (5) The overall size of the public employer with respect to the number of its public employees;
  - (6) The number, type, and location of the public employer's operations, including the composition, structure, and functions of the work force of the public employer;
  - (7) The geographic separateness, administrative, or fiscal relationship of the public employer's operations to the whole public employer.
- (D) A public employer's request for an exclusion on the basis of undue hardship must be in writing and include the following information:

- (1) The name and address of the public employer and the name, title, and telephone number of a contact person for the employer in regard to the exclusion request;
  - (2) The address of the place or places of employment involved;
  - (3) A clear and specific statement as to the order, standard or regulation for which an exclusion is requested;
  - (4) A statement that the exclusion does not involve an order, regulation or action which is required to prevent imminent danger or death or serious harm to a public employee;
  - (5) A statement by the public employer supported by statements from qualified persons with firsthand knowledge of facts represented, that the public employer is unable to comply with the order, standard, or regulation due to an undue hardship for the factors outlined in paragraph (C) of this rule;
  - (6) A statement of the steps the public employer has taken and will take (with specific dates) to protect its public employees or others who may be affected;
  - (7) A certification that the public employer has informed its employees of the exclusion request by taking one or more of the following steps:
    - (a) Giving a copy of the exclusion request to the public employee representatives, if any;
    - (b) Posting at a location or locations where public notices to employees are normally posted, a summary of the exclusion request, such a summary shall include the means by which a complete copy of the exclusion request may be examined;
  - (8) The certification of notice to the employees must contain a description of how the employees have been informed.
- (E) Upon receipt and review of a request for an exclusion on the basis of an undue hardship, the public employer must provide the superintendent any additional information requested to make a decision on the request.
- (F) An undue hardship exclusion will be granted only if the requirements of paragraph

(C) of this rule are met and only after the employer could not abate the violation within the time limits set in paragraph (C) of rule 4167-5-01 of the Administrative Code. If one or more of the factors have changed that resulted in the initial granting of the exclusion, these factors will be reviewed to determine if the exclusion shall remain in effect.

R.C. 119.032 review dates: 10/24/2008 and 10/01/2013

**CERTIFIED ELECTRONICALLY**

---

Certification

10/24/2008

---

Date

Promulgated Under: 119.03  
Statutory Authority: 4121.12, 4121.121, 4167.02, 4167.07  
Rule Amplifies: 4167.01  
Prior Effective Dates: 7/1/94, 11/15/96, 8/1/01