

TO BE RESCINDED

4167-7-01 **Variances from Ohio public employment risk reduction standards.**

(A) Pre-application process. A pre-application process is available for any public employer or group of public employers who wishes to have the superintendent, or superintendent's designee, review either a temporary or permanent variance proposal to determine if the variance process is the appropriate action to pursue by the public employer.

(1) The fee for the pre-application review is one hundred dollars.

(2) The pre-application fee will be credited toward the application fee for the variance if, after review, the superintendent determines that the variance process is the appropriate action.

(3) A public employer's pre-application for a variance order must also include:

(a) A certification statement that the public employer has informed the affected employees of the application by taking the following steps:

(i) Giving a copy of the application to the public employees' authorized representative, if any;

(ii) Posting at a location or locations where notices are normally posted a summary statement of the application;

(iii) Specifying at the place or places where notices to employees are normally posted and by other appropriate means where a complete copy may be examined.

(b) A description of how the employees have been informed.

(c) Where employees do not usually work at, or report to, a single establishment (such as but not limited to field inspectors), a summary statement shall be made available to each affected employee by other means (such as but not limited to by mail).

(B) Temporary variances.

(1) Any public employer or group of public employers may apply to the

superintendent for a temporary variance from an adopted standard or from any of its separate provisions.

(2) The superintendent shall issue an order providing for a temporary variance if the public employer files an application that meets the following requirements:

- (a) That the public employer is unable to comply with a standard or a provision thereof by its effective date because of the unavailability of professional or technical personnel, materials, and/or equipment needed to comply with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date.
- (b) That the public employer is taking all available steps to safeguard its employees against the hazards the standard covers.
- (c) That the public employer has an effective program for complying with the standard as quickly as practical.
- (d) The granting of the variance will not create an imminent danger of death or serious physical harm to its employees or those that may be affected.

(3) A public employer's application for a temporary variance order must include:

- (a) The name and address of the applicant;
- (b) The address of the place or places of employment involved;
- (c) A specification of the standard or portion thereof from which the public employer is seeking a temporary variance;
- (d) 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 standard or portion thereof;
- (e) A detailed statement of the reasons the public employer is unable to do so;
- (f) A statement of the steps the public employer has taken and will take (with specific dates) to protect employees or others which may be affected against the hazard the standard covers;

- (g) A statement of when the public employer expects to be able to comply with the standard and what steps it has taken and will take (with specific dates) to comply with the standard;
 - (h) A certification that the public employer has informed the affected employees of the application by following notification procedures in paragraph (A)(3) of this rule.
 - (i) A statement that employees have been informed of their right to a hearing.
- (4) The superintendent may issue an interim variance order to a public employer if all the application requirements have been met. An interim order will be in effect until a final decision is made on the basis of a hearing.
- (5) Length of temporary variance orders.
 - (a) A temporary variance order may not be in effect for longer than the period the public employer needs to achieve compliance with the standard or for one year, whichever is shorter.
 - (b) A temporary variance order may be renewed two times, each time for six months, if;
 - (i) All application requirements have been met; and
 - (ii) The renewal application is filed at least ninety days prior to the order's expiration date.
- (6) An application for a temporary variance order shall contain an application fee of one thousand dollars.
- (7) An application for a renewal of a temporary variance order shall contain an application fee of one hundred dollars.

Effective:

R.C. 119.032 review dates: 10/09/2013

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.121, 4167.02
Rule Amplifies: 4167.11
Prior Effective Dates: 7/1/94, 11/15/96