WEST VIRGINIA CODE CHAPTER 21 ARTICLE 3B

WV Legislature

§21-3B-1. Title and purpose.

This article shall be known and may be cited as the "Employer Assistance For Environmental Protection Act."

It is the purpose of this article to make available to employers in this state assistance in identifying environmental and hazardous waste hazards common to the workplace and to further assist such employers in developing plans for compliance with all such concerns. Such assistance will be provided using the available personnel and resources of the various state agencies involved in the regulation and control of environmental and hazardous waste disciplines.

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§21-3B-2. Duties and responsibilities of Division of Labor and the commissioner of labor.

(a) The Division of Labor shall:

(1) Encourage employers and employees to reduce existing environmental and hazardous waste hazards and to implement new or improved existing safety and health programs;

(2) Provide technical advice and information relating to environmental hazards and waste hazards;

(3) Develop and implement training programs to increase the employer and employee competence in managing and correcting environmental hazards and waste hazards;

(4) Develop and coordinate an information network relating to applicable environmental and hazardous waste law affecting the business community in West Virginia;

(5) Offer a program of on-site consultation to assist businesses in identifying environmental hazards and waste hazards; and

(6) Offer to businesses an off-site program by telephone or correspondence for information and assistance in complying with environmental regulation.

(b) The commissioner of labor shall develop and implement rules, regulations and administrative guidelines required to effectuate the purposes of this article.

(c) In carrying out the duties and responsibilities imposed by the provisions of subsection (a) of this subsection, or in developing and implementing rules, regulations and administrative guidelines in accordance with the provisions of subsection (b) of this section, the Division of Labor and the commissioner shall not expend any state funds or utilize any personnel of the division for the training of any permanent replacement employee, unless and until such permanent replacement employee has been determined by the commissioner to have been legally employed.

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§21-3B-3.

Repealed.

Acts, 2015 Reg. Sess., Ch. 53.

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§21-3B-4. Procedures.

(a) Any employer within the state may request the commissioner of labor in writing to provide advice and assistance in identifying and eliminating environmental hazards in compliance with applicable state, federal and local law. The employer may specify a limited scope for consultation by indicating hazards or situations on which consultation will be focused. No consultation services may be provided when an agency charged with enforcing federal, state or local environmental or hazardous waste regulations has issued a citation or ordered that a condition be abated or corrected.

(b) The commissioner shall provide on-site consultation services in identifying and eliminating environmental hazards. However, since employee contact by a consultant is needed for proper identification of environmental hazards in the workplace, employers must agree to such contact before a consultation may proceed. Employers must agree to correct all hazards noted by the consultant as a condition of the providing of consultation services. Employers are encouraged to permit employees to participate in the walk-around portion of a consultation visit.

(c) Prior to visiting a worksite, the consultant may request specific information concerning the worksite. Requested information must be provided before a consultation may proceed.

(d) If, in the course of an inspection, the consultant observes environmental hazards violating federal, state or local law which are outside the scope of a consultation request, the consultant shall treat such hazards as if they were within the scope of the consultation request.

(e) During the on-site consultation, the consultant shall point out hazards and violations observed, suggest approaches or options for corrective action, and provide additional information related to complying with applicable laws. The consultant shall prepare a written report, which shall be furnished to the employer, of all hazards observed and methods of abatement and may suggest where additional assistance may be secured. The consultant may follow through after the on-site consultation to assist in implementing recommendations and to assure that required corrective action is taken.

(f) Information obtained by a consultant related to environmental hazards and violations may not be disclosed to enforcement officials, except when an employer fails or refuses to take corrective action to eliminate imminent danger or serious hazards.

(g) No fees, penalties or costs may be assessed against the employer.

(h) The use of the consultation services contemplated by this article by any employer shall raise no presumption, inference, or defense to any action, order, citation, charge, rule to show cause, or any other enforcement effort brought against such employer by any agency of the State of West Virginia.

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