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STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Proposed Adoption of Workers' Compensation Rules: Safety and Health Committees

STATEMENT OF NEED AND REASONABLENESS

The 1992 legislature enacted Minn. Stat. § 176.232 (1992 Minn. Laws, Chapter 510, Article 3, Section 28) which provides as follows:

> Every public or private employer of more than 25 employees shall establish and administer a joint labor-management safety committee.
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> Every public or private employer of 25 or fewer employees shall establish and administer a safety committee if:
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> 1) the employer has a lost workday cases incidence rate in the top ten percent of all rates for employers in the same industry; or
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> 2) the workers' compensation premium classification assigned to the greatest portion of the payroll for the employer has a pure premium rate as reported by the workers' compensation rating association in the top 25 percent of premium rates for all classes.
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> The commissioner may adopt rules regarding the training of safety committee members and the operation of safety committees.

The proposed rules implement Minn. Stat. § 176.232 by defining terms and setting minimum standards for joint labor-management safety and health committees.

The 1992 legislature also mandated that insurers provide safety consultation services to their policyholders upon request. Minn. Stat. § 79.085 as enacted by 1992 Minn. Laws, Chapter 510, Article 3, Section 2. Part 5204.0080 implements Minn. Stat. § 79.085.

5204.0010. The purpose of this section is to advise the employer as to the circumstances under which a safety and health committee is subject to this set of rules. The rule provides that whenever a safety and health committee is required by Minn. Stat. § 176.232 it is subject to these rules. This broad application of the rules was chosen to avoid the confusion that might arise if exceptions were created. The section also advises employers that have a workforce which fluctuates above and below the threshold of 25

employees. The rule provides that whenever the workforce is above 25 employees, the employer must have a safety committee, but whenever the workforce falls to 25 or fewer employees, the employer's obligation no longer exists. This was done to provide clarity. The employer will be able to tell if a committee is needed by simply determining the size of the workforce. The statute sets the threshold number of employees at 25.

5204.0020. The basic concept of a joint labor-management safety and health committee is that the employees themselves are likely to be in the best position to identify safety hazards in the place they work. Therefore, to the extent possible, employee members on the safety and health committees should be employees from the location being inspected. For large employers with many facilities in the state, this would be impossible unless the employer had different committees for different facilities. This is the reason that an employer is required to have a separate committee for each facility with 50 employees. Many employers, even small employers, may have several facilities at which only a few employees work. To require each facility to have a separate committee would impose a greater burden on the employer than is justified. It was for this reason that the facility must employ 50 employees to require a separate committee. This rule is not intended to exempt employers of 26 to 49 employees from the requirements of Minn. Stat. § 176.232, but merely addresses the issue of multiple sites and location of the safety committee. The sentence on multiple buildings was included to make sure that a literal reading of location was not used which would create an unnecessary administrative burden for employers. In the construction industry, there are multi-employer committees and industry-wide safety committees that are currently operating effectively. The sentences dealing with these types of committees were included to make sure that they could continue to operate.

5204.0030. This section requires that the employee representative must be selected by the employees. This was required to ensure that the employee representative truly represents the employees. The employer was given the power to name the employee representative when there are no volunteers and there is no union; under those circumstances someone must make the selection. The provisions relating to more than one collective bargaining agent refers to the multi-employer committees that are currently used on construction sites and reflect current practice. The provision that requires the number of employee representatives to equal or exceed the number of employer representatives was included to ensure that the employer would not dominate the committee. The last sentence of the section was included to ensure that the safety committee was an ordinary employment function. The first clause of that sentence was included to make sure that the employer and a union could bargain about that topic if they chose to do so.

5204.0040. This section is designed to allow the committee flexibility in establishing its operating procedures. A quarterly safety survey is very minimal. It is expected that most committees will be more active than the minimal requirement of the section. There is such a wide variety of safety risks that the Department decided that at this time it would

be better to be flexible and let each committee set its own schedule than to unnecessarily burden relatively risk free businesses with a rigid schedule of inspections. To ensure that a committee would not abuse this flexibility, the Commission upon request is given the power to order more frequent safety inspections.

5204.0050. This section is designed to give guidance to the safety committees as to what they are supposed to do. The duties imposed are: setting up a system to obtain input between safety inspections, review the employer's safety program, and reviewing accidents. These are all normal activities for a safety health committee. The employer is required to keep records of the committee's activities to enable the Department to monitor the effectiveness of safety committees. A two year retention of records requirement was chosen as a period that would allow adequate monitoring, but would not be unnecessarily burdensome on the employer.

5204.0060. This section protects employees who report safety hazards so that the employee will not be afraid to make such reports. The level of protection is the same as that provided under the OSHA Statute governing retaliatory action.

5204.0070. The purpose of this section is to make sure that the rules do not stifle the development of innovative approaches to safety committees. Failure to permit alternative forms of committees would eliminate experimentation that could lead to a more effective form of committee for certain types of employers. The provision allowing a committee formed as a part of a workplace accident and injury reduction program to satisfy the requirements of the rules is designed to remove a potential unreasonable burden from the employer. The burden is having two almost identical but not quite identical committees doing almost the same thing.

5204.0080. It is reasonable to expect that an insurance company will have risk management capabilities in the areas that it writes insurance. These services are mandated by Minn. Stat. § 79.085. This section simply requires that the insurer passes on its expertise to its insureds. To make sure that there is no undue burden on the insurance company, the section does not require the insurer to do anything that is not reasonable.

5204.0090. It is well known that in the construction industry many contractors use workers that are designated "independent contractors" rather than "workers" or "employees". This is done to avoid the high cost of workers' compensation insurance for those trades. The distinction between an employee and an independent contractor is extremely fine and it is generally believed that this fine line is overstepped frequently. The safety benefits of safety committees should not be denied workers on a legal technicality. Therefore, the rule treats independent contractors as employees in the hazardous construction industry.

Small Business Impact

The primary impact of these rules on small business is that they will have fewer accidents and thus lower workers' compensation costs. The rules impose no significant requirements on small business beyond what is already required by the statutes.

The Department has considered the impact on small business under Minn. Stat. § 14.115 as follows:

a) Less stringent compliance or reporting requirements: Part 5204.0020 allows the employer to consolidate committees where the employer operates from more than one site. This lessens the burden on employers with multiple small operations. Part 5204.0050 contains very flexible and minimal standards for committee operations and recordkeeping. Part 5204.0070 provides that safety committees already established at a work site generally comply with the statute; it also provides that the main goal of the program is to satisfy the intent of the statute. Flexibility for small and large employers is thus built into this program.

b) Less stringent schedules or compliance or reporting deadlines: The only deadline or schedule contained in the rules is a quarterly safety and health survey for some employers. This is a minimal standard, but could be waived under part 5204.0070 if the program satisfies the intent of the statute.

c) Consolidation or simplification of compliance or reporting requirements: The proposed rules are simply and straightforward, easy for any employer to understand. The only reporting requirement is to respond to a Department request for information. This minimal requirement is necessary for compliance monitoring and is not burdensome to small employers.

d) Performance standards instead of design or operational standards: The rule requirements are quite general and flexible, allowing employers to design their own safety programs with minimal required standards. The smallest employers (fewer than 25 employees) may aim for the performance standard contained in the statute which will exempt them from the requirement: a lower lost workday incident rate or a better workers' compensation experience rating. Employers will likely find, however, that a safety committee assists in obtaining the goal of a lower workers' compensation injury rate.

e) Exemption from rule requirements: See discussion under a.

Local Public Bodies Impact

There will be no negative impact on local public bodies imposed by these rules. All mandated activities may be performed by existing personnel. The rules should result

in a cost savings due to lower workers' compensation costs because of the imposed safety.

Effect on Spanish-Speaking People and Agricultural Land

These rules have no impact that is unique to Spanish-speaking people. There is no impact on agricultural land.

Witnesses

The following people may appear as witnesses: John B. Lennes, Jr., Commissioner; Nancy Christensen, Assistant Commissioner; and Tim Tierney, OSHA Compliance.

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