

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, 2533 and 29 Delaware Code, Chapter 101
(18 **Del.C.** §§311 and 2533 and 29 **Del.C.** Ch. 101)
18 **DE Admin. Code** 802

PROPOSED

802 Delaware Workplace Safety Regulation

PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 802 relating to Delaware Workplace Safety [Formerly Regulation 65]. The docket number for this proposed amended Regulation is 2226.

The proposed amended Regulation supports the Delaware Workplace Safety Program (18 **Del.C.** §2533) and follows new requirements passed under House Bill 175, for the 147th General Assembly, enacted on June 27, 2013. The Delaware Code authority for the change is 18 **Del.C.** §311 and §2533; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended Regulation. The proposed amended Regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, August 30, 2013. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

802 Delaware Workplace Safety Regulation

1.0 Authority

This regulation is adopted and promulgated by the Insurance Commissioner pursuant to 18 **Del.C.** §311, §2533 and promulgated under 29 **Del.C.** Ch.101.

2.0 Purpose

The purpose of this regulation is to:

- 2.1 Enhance the health and safety of workers in the State of Delaware.
- 2.2 Provide lower insurance premiums for qualifying employers who currently pay \$3,161 or more of annual Delaware Workers' Compensation premiums.
- 2.3 Establish both testing and inspection procedures to determine an employer's qualification for a premium credit under the Workplace Safety Program.

3.0 Scope

All employers who comply with the criteria set forth in this regulation are eligible for participation in the Workplace Safety Program. Only Delaware work sites will be eligible for this program and safety credit applies to only Delaware premiums in multi-state policies.

4.0 Eligibility and Premium Credit

An employer is eligible for the Safety Program if its annual premium is \$3,161 or more. Workplace Safety credit eligibility is based on the most current unit statistical card filing. The Delaware Compensation Rating Bureau will test each employer by taking the most current unit statistical card payroll times current rates times current experience modification to determine the employer's premium size.

5.0 Notice of Employer Eligibility

Employers meeting the premium requirement will be notified by the Delaware Department of Insurance seven months in advance of their policy renewal date. This notification will include(s) instructions for qualifying for a safe workplace credit.

6.0 Eligibility Period

The Department will notify the employer of eligibility, and inform the employer that he must elect at least five (5) months in advance of the date of policy renewal to participate in the Safety Program. Failure to notify the Department within this time period of an intent to renew participation may preclude the employer's participation in the Program for the next year. Election to participate shall commence by contacting the Delaware Department of Insurance.

7.0 Inspections and Cost

7.1 There are three options for Workplace Safety Inspections to be conducted. To obtain the Workplace Safety Program premium discount, all inspection procedures and inspection reports must be in compliance with the requirements and standards set forth by this regulation. In the event of multiple applications, only the first application received will be accepted.

All inspections must include a thorough review of the following items, which are to be maintained by the employer and made available for the inspector to review:

- Any workplace injuries that have occurred within the three years prior to the application.
- The outcome of those injuries, including specific details of the injuries.
- Confirmation of Modification Duty Availability Reports for all injuries, as applicable.
- Any findings or fines relating to workplace safety resulting from the injuries.
- A list of possible assignments for injured workers.
- Any safety measures taken by the employer as a result of the injuries.

NOTE: A recommendation by the inspector based on the above information as to whether or not the employer should receive the workplace safety credit must also be included.

7.1.1 All inspections shall be made by a representative from an independent safety expert company under contract to the Insurance Department will follow this procedure. The Insurance Department will notify the inspector of the employer's request. The inspector, in turn, will then contact the employer to set up the first of two inspections. A second unannounced inspection shall be made no later than the expiration date of the policy to which any workplace safety credit based on the inspection will apply to confirm the initial certifications of safety in the workplace. The Department of Insurance will notify the Bureau when an employer successfully completes each scheduled and/or nonscheduled inspection. Failure to pass a scheduled inspection will result in a denial of an employer's eligibility to participate in the Workplace Safety Program. However, the employer, after failing an inspection can request another inspection, after successful completion of which will make them eligible for participation in the Workplace Safety Program.

7.1.2 The cost of each inspection will be borne by the employer. The minimum charge for safety inspection is \$150 per location. Each work location must successfully pass both inspections before an employer is entitled to a premium credit under the program. Inspection fees for large and/or complex employers may be established by the Department of Insurance.

7.2 The cost of each inspection will be borne by the employer. The minimum charge for safety inspection is \$150 per location. Each work location must successfully pass both inspections before an employer is entitled to a premium credit under the program. Inspection fees for large and/or complex employers may be established by the Department of Insurance. Insurers issuing workers compensation insurance in Delaware may submit their own workplace safety inspection procedures for review by the Insurance Department. The Insurance Department shall permit the insurer's inspection to satisfy the inspection requirements of paragraph 7.1.1 if the inspection procedures are at least as rigorous as those employed by the Insurance Department and its independent safety experts. An insurer's safety inspection procedures must be re-certified on a bi-annual basis to maintain status as an acceptable substitute.

7.3 If the annual workers compensation insurance premium is between \$3,161 and \$10,000 for an eligible employer, the employer may opt to undergo an inspection conducted by a qualified inspector from the

Delaware Department of Labor at a cost determined by the Department of Labor but not to exceed the maximum fee as per the inspection charges maintained by the Insurance Department.

8.0 Renewals and Eligibility

An employer must apply for the Workplace Safety Program each year. For each year after the initial qualification, the inspection requirement will consist of one unannounced inspection. The Department will maintain a list of inspection charges for inspections conducted pursuant to paragraph 7.1, which will be sent to interested parties upon request.

9.0 Premium Size Ranges and Corresponding Credits

Safety credits will be granted according to the following formula:

$$20\% \times [1.0000 - C]$$

where "C" is the credibility of the qualified employer in the uniform Experience Rating Plan for the policy period expiring immediately prior to the application of the Safety credit. If the qualified employer was not experience-rated in the policy period expiring immediately prior to the application of the Safety credit, "C" will be set at 0.050 Safety credit packages will be rounded to the nearest whole percent.

10.0 Effect upon Mutual Rates and Schedule Rating Credits

- 10.1 Workers' Compensation manual rates shall be adjusted because of implementation of this program. A Delaware Workplace Safety Program Factor shall be included in loss costs and residual market rates. This factor may offset credits given to qualified employers, so that the Workplace Safety Program will neither increase nor decrease premiums for eligible employers in the aggregate.
- 10.2 Schedule rating plan credits given to policyholders for "competitive" reasons cannot be withdrawn. Schedule credits given for safety reasons may be reduced to offset the Workplace Safety Program premium credit.
- 10.3 A Merit Rating Plan shall be implemented which will provide incentives for employers paying less than \$3,161 of annual Delaware Workers' Compensation premiums to maintain safe workplaces.

11.0 Effective Date

~~The amended portions of this regulation shall become effective on July 1, 1999.~~ This Regulation shall become effective 10 days after being published as a final regulation.

17 DE Reg. 166 (08/01/13) (Prop.)