

ALAN G. HEVESI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

April 1, 2004

Ms. Linda Angello
Commissioner
Department of Labor
State Office Campus, Building 12
Albany, NY 12240

Re: Report 2003-F-39

Dear Ms. Angello:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by the Department of Labor (Department) to implement the recommendations contained in our audit report, *Public Employee Safety and Health Program (Report 2000-S-49), issued June 6, 2002.*

Background, Scope and Objectives

The Department's Public Employee Safety and Health Unit (PESH) within the Division of Safety and Health is responsible for overseeing the workplace protection of over 1.3 million public employees in the State. The State Labor Law provides for all non-Federal public employees in the State to be protected by workplace safety and health standards that are as effective as Federal Occupational Safety and Health Administration (OSHA) standards for private sector employees. States with workplace protection programs for public employees must have State Plans indicating how they will ensure this protection. OSHA is charged with reviewing and approving State Plans and with actively overseeing state-operated programs.

Our initial report determined whether the Department's oversight and investigative efforts effectively ensured that the State's public employees work in a safe and healthy environment and whether department processes ensured that employees cited for violations correct problems timely. Our report identified a number of instances where Department investigative efforts did not provide adequate assurance of a safe and healthy workplace. We noted many instances for which complaints were misclassified, investigations were delayed and case processing was inefficient, with the result that cited hazards may not be corrected timely. The objective of our follow-up, which was conducted in accordance with Generally Accepted Government Auditing Standards, was to assess the extent of implementation, as of February 17, 2004, of the 12 recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that the Department has corrected many of the problems we identified. However, additional improvements are needed. Of the 12 initial audit recommendations, 9 recommendations have been implemented, and 3 recommendations have been partially implemented.

Follow-up Observations

Recommendation 1

Monitor PESH operations to ensure that investigations are conducted appropriately and in accordance with the Manual. This requires:

- *investigators identifying hazardous and unsafe workplace conditions so that all appropriate violations are identified and notices of violation are issued;*
- *properly classifying complaints according to the Manual's established definitions and responding to them within the mandated time frames; and*
- *accurately recording complaint-related data on the IMIS in a timely manner.*

Status - Partially Implemented

Agency Action - We confirmed that since 2001, PESH program managers have completed 24 district office reviews designed to monitor caseloads, the quality of investigative and consultation reports, and compliance with the PESH manual and IMIS data entry requirements. For example, these reviews ascertain whether: investigators identified hazardous and unsafe workplace conditions and issued notices of violation; properly classified complaints according to the Manual's established definitions and responded to them within the mandated time frames; and accurately record complaint-related data on IMIS in a timely manner. However, we found that the results of these reviews are conveyed verbally to district officials; there are no written reports. We believe the results of these reviews should be formally summarized to enhance the Department's ability to monitor the program.

Recommendation 2

Verify that inspectors complete the core courses and maintain their knowledge and skills by enrolling, at a minimum, in a safety and health course at the OSHA Training Institute every three years.

Status - Partially Implemented

Agency Action - Currently, 30 of the 56 PESH staff, have completed all required core course training at the OSHA Training Institute. It is anticipated that 18 additional employees will have completed core training by September 2004. The remaining eight have not completed core training principally because they have been with PESH for more than 10 years.

According to the Department, these individuals would not benefit from the OSHA Training given their job training, experience and other forms of formal training. Instead, the Department plans to enroll them into advanced safety and health training.

Recommendation 3

Use the Individual Development Plans to coordinate training needs.

Status - Implemented

Agency Action - We confirmed that Department officials have begun to use the Individual Development Plans to coordinate training needs.

Recommendation 4

Enroll inspectors in safety and health courses designed for compliance personnel.

Status - Implemented

Agency Action - This recommendation related to the Department's use of Niagara County Community College to train PESH inspectors. We had found that this training did not meet OSHA standards. The Department no longer uses Niagara Community College as a training provider. Instead, it uses OSHA's Training Institute exclusively.

Recommendation 5

Evaluate PESH's training policy to determine if the completion of one course every three years is sufficient to assure that inspectors are adequately trained.

Status - Implemented

Agency Action - We determined that the Department, on an ongoing basis, evaluates the training policy of having inspectors' complete one course every three years. Based on this evaluation, the Department may, at some point, decide to revise the policy.

Recommendation 6

Evaluate the adequacy of the staffing levels contained in the State Plan and maintain adequate staffing levels.

Status - Implemented

Agency Action - The Department has evaluated its PESH staffing levels contained in the State Plan which is the result of a cooperative agreement between OSHA and the Department. Currently the PESH staffing level is at 95 percent of authorized levels, which the Department believes is adequate.

Recommendation 7

Review the allocations of positions within enforcement to see that a sufficient number of Safety and Health Inspectors are available in each district.

Status - Implemented

Agency Action - The Department has reviewed workflow and staffing levels in each district and concluded that there are a sufficient number of safety and health inspectors available in each district.

Recommendation 8

Evaluate and revise the Manual's procedures for discrimination case processing and provide the updated Manual to districts.

Status - Implemented

Agency Action - The Manual for discrimination cases has been evaluated, revised and provided to the districts.

Recommendation 9

Evaluate the discrimination investigation process and staffing levels so that discrimination cases are processed within established time frames.

Status - Partially Implemented

Agency Action - The Department evaluated the discrimination process and staffing levels so that discrimination cases are processed within established time frames. While the cases are still tardy, time to complete the investigations has been reduced by nearly 32 percent from 365 days to 250 days.

Recommendation 10

Ensure districts conduct discrimination investigations in a consistent manner. To promote consistency, develop a generic checklist that identifies the documentation discrimination investigators are required to maintain in the case file folders. Documentation should include release forms authorizing the review of personnel histories.

Status - Implemented

Agency Action - While the Department did not develop a checklist, as an alternative, it has revised and redistributed its manual and has placed a trained discrimination investigator in each district to ensure districts conduct and document discrimination investigations in a consistent manner.

Recommendation 11

Provide discrimination investigators with the appropriate training at the OSHA Training Institute, as required by the Manual.

Status - Implemented

Agency Action - All discrimination investigators and their supervisors attended the appropriate training on June 10 and 11, 2003.

Recommendation 12

Monitor the timeliness of discrimination case processing through district and central office case reviews.

Status - Implemented

Agency Action - The Department has been monitoring timeliness. As a result, the timeliness of processing discrimination cases has improved from 350 days to 250 days as of September 30, 2003.

Major contributors to this report were Richard Sturm, Donald Wilson and Michael Filippone.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Department for the courtesies and cooperation extended to our auditor during this process.

Very truly yours,

William P. Challice
Audit Director

cc: Karen Stackrow
Deirdre Taylor