

**FY 2019 Comprehensive
Federal Annual Monitoring Evaluation (FAME) Report**

**State of New York
Public Employee Safety and Health (PESH) Bureau**



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**Prepared by:
U. S. Department of Labor
Occupational Safety and Health Administration
Region II
New York, NY**



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I. Executive Summary

The purpose of this report is to assess the New York Public Employee Safety and Health (PESH) State Plan's performance for Fiscal Year (FY) 2019, and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) reports.

During the FY 2019 performance period, NY PESH program administration continued to maintain a high-level of program performance. NY PESH was responsive to OSHA, including providing requested information in a timely manner and actively participating in the regular quarterly meetings. NY PESH staff made it a priority to work through outstanding findings identified in previous FAME reports.

PESH is responsible for protecting the health and safety of more than two million state and local government (SLG) workers in New York. PESH continues to have a significant presence in SLG workplaces through its inspection activity, partnerships, and outreach activity. PESH conducted 1,568 inspections in FY 2019 – 1% above the projected goal of 1,550 but slightly less than the 1,662 inspections conducted in FY 2018. PESH conducted 237 visits in FY 2019 – 12% below the projected goal. Retirements and transfers of four consultants by the end of FY 2019 resulted in staffing levels falling from 10 to six consultants.

In recent years, legislation passed in New York required safe patient handling (SPH) programs implemented in state healthcare facilities. Members of PESH's Healthcare Strategic Plan Committee continues to work with healthcare facilities and taskforce groups to provide education regarding injuries suffered while providing residential/patient care, as well as the benefits of effective safe patient handling programs. PESH co-sponsors the Safe Patient Handling Conferences where SLG employers and workers are encouraged to attend and receive professional Continuing Education Units (CEUs) if needed.

Last year's PESH FAME report included two findings and nine observations. One finding regarding workplace retaliation screening procedures was completed, and the finding related to incomplete data not entered into the OSHA Information System (OIS) was continued. Six of the nine (67%) observations were appropriately addressed and closed.

During the comprehensive on-site case file review, OSHA identified one new finding and one new observation. In summary, this report contains a total of two findings and four observations. Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and related federal monitoring plans. Appendix C describes the status of previous findings with associated completed corrective actions.

II. State Plan Background

A. Background

The New York Department of Labor administers the New York State Plan. Roberta Reardon, Commissioner of Labor, has full authority to enforce and administer all laws and rules protecting the safety and health of all state and local government workers in the state and its political subdivisions. In addition to the State Plan’s enforcement responsibilities, NY PESH provides free on-site consultation and training services to state and local government agencies, upon request.

NY PESH consists of one central office in Albany, New York, and eight district offices located in Binghamton, Syracuse, Utica, Rochester, Buffalo, White Plains, Garden City, and New York City (Manhattan). The NY State Plan applies to all state and local government employers in the state, including: state, county, town, and village governments, as well as public authorities, school districts, and paid and volunteer fire departments.

Private sector enforcement is retained under federal jurisdiction while private sector consultative services are provided by the New York State Department of Labor-Division of Safety and Health (NYSDOL-DOSH) Consultation Services Bureau under Section 21(d) of the OSH Act. NY PESH adopted all applicable OSHA safety and health standards either identically or through alternative means. However, the PESH ACT does not allow for the issuance of “first instance” monetary penalties for state and local government employers found in violation of NY PESH standards. Per diem penalties can be assessed when failure-to-abate (FTA) notices are issued.

The table below presents NY PESH’s funding history over the past five years:

FY 2015-2019 PESH Funding History					
Fiscal Year	Federal Award (\$)	State Plan Match (\$)	100% State Plan Funds (\$)	Total Funding (\$)	Percentage of State Plan Contribution
2019	\$3,778,200	\$3,778,200	\$1,466,654	\$9,023,054	59%
2018	\$3,705,200	\$3,705,200	\$2,096,253	\$9,506,653	61%
2017	\$3,705,200	\$3,705,200	\$1,209,200	\$8,619,600	57%
2016	\$3,705,200	\$3,705,200	\$1,226,400	\$8,636,800	57%
2015	\$3,688,600	\$3,688,600	\$1,243,000	\$8,620,000	57%

In the FY 2019 grant application, NY PESH allocated for 43 enforcement staff and had 32 onboard; 10 safety and health consultants were allocated and seven were onboard. They also have three whistleblower investigators onboard. NY PESH does not meet staffing expectations (29 safety/21 health); however, as a state and local government-only State Plan, NY PESH is not subject to required benchmark levels.

B. New Issues

None.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2019 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A four-person OSHA team which included the Assistant Regional Administrator for Whistleblower (ARA/WB) was assembled to conduct the comprehensive on-site case file review. The on-site enforcement and consultation case file review was conducted at PESH's Binghamton Office during December 9 – 13, 2019, and the whistleblower case file review was conducted at the Albany Office on December 9 - 10, 2019. A total of 101 safety, health, consultation, and whistleblower inspection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (Oct 1, 2018 through September 30, 2019). The selected population included:

- 15 whistleblower case files
- 22 consultation case files
- 64 enforcement case files (39 safety and 21 health, fatality/hospitalizations, complaints, planned, referrals, and four PMAs)

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

- State Activity Mandated Measures Report (Appendix D)
- State Information Report (SIR)
- Mandated Activities Report for Consultation (MARC)
- State OSHA Annual Report (SOAR) (Appendix E)
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Comprehensive on-site case file review

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon Further Review Level (FRL) which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2019 SAMM Report and includes the FRL for each measure.

B. Review of State Plan Performance

1. PROGRAM ADMINISTRATION

- a) Training

PESH continues to provide compliance safety and health officers (CSHOs) the opportunity to attend the OSHA Training Institute (OTI) for needed safety and health technical training. During FY 2017, 42 staff attended 79 OTI training courses.

b) OSHA Information System (OIS)

PESH uses OIS data for tracking purposes. The FRL for average lapse time for safety is +/- 20% of the three-year national average of 47.61 days which equals a range of 38.08 days to 57.13 days. During FY 2019, PESH's average lapse time for citations was calculated at 89.61 days for safety which is substantially higher than the FRL. The FRL average lapse time for health is +/- 20% of the three-year national average of 57.23 which equals a range of 45.78 days to 68.68 days. PESH's health lapse time was calculated at 89.90 days which also exceeds the FRL (SAMM #11). NY PESH is aware of the high lapse time for both safety and health. They are continuing to conduct weekly meetings with the Counsel's Office to review the high profile cases quickly in an effort to remedy this. This is the second year that NY PESH significantly exceeded the FRL on SAMM 11; therefore, this will continue to be an observation.

Observation 19-01 (FY 2018-OB-08): Safety Lapse Time

In FY 2019, the average safety lapse time (SAMM 11) for citations was calculated at 89.61 days which is above the FRL range of 38.08 days to 57.13 days.

Federal Monitoring Plan 19-01:

In FY 2020, OSHA will continue to monitor this issue utilizing quarterly SAMM reports.

Observation 19-02 (FY 2018-OB-09): Health Lapse Time

In FY 2019, the average health lapse time (SAMM11) for citations was calculated at 89.90 days which is above the FRL range of 45.78 days to 68.68 days.

Federal Monitoring Plan 19-02:

In FY 2020, OSHA will continue to monitor this issue utilizing quarterly SAMM reports.

OIS Data/Information

Finding 19-01 (FY 2018-01):

Five enforcement health case files (where sampling was performed) were reviewed resulting in finding that data/information was incomplete and/or not entered into OIS. For example:

- Pre-and post-calibration information was missing in all five (100%) case files reviewed.
- Sampling data collected was not entered into OIS in all five (100%) case files reviewed.

Recommendation 19-01:

PESH enforcement should ensure that when sampling is performed complete data is entered in the OIS system on the appropriate form.

c) State Internal Evaluation Program (SIEP) Report

The New York SIEP Report incorporates both field assessments performed by supervisors and case file assessments performed by a program manager. PESH conducts at least one field and one case file assessment for each inspector as well as for each consultant. These assessments were performed and documented in FY 2019 and FY 2018.

d) Staffing

Staffing continues to remain consistent – the total FTEs allocated for PESH in FY 2019 and FY 2018 was 81. PESH currently has 61 FTEs onboard of which 32 fall under enforcement, seven are under consultation (23(g) state and local government workplaces), and the remaining 17 are managers or administrative staff. PESH has been under a hiring freeze since FY 2009 and that freeze has not been lifted. During FY 2019 and FY 2018, PESH did not experience furloughs.

2. ENFORCEMENT

a) Complaints

During this evaluation period, PESH responded to 375 complaints with an average response time of 5.91 days from notification. This is a slight increase from the 5.23 days in FY 2018 and is within the negotiated level of ten days (SAMM #1A). The average number of days to initiate complaint investigations was 2.20 days in FY 2019, which is above the negotiated level of one day (SAMM #2a). This is a slight increase from the 1.0 days in FY 2018. During both FY 2019 and FY 2018, PESH did not receive any imminent danger complaints or referrals (SAMM #3) and they did not receive any denials of entry (SAMM#4).

During the review of 21 complaint case files, all 21 (100%) contained documentation that the employer and worker representative were provided with a copy of the complaint. PESH's own internal field audits indicate that employers and worker representatives are provided with a copy of the complaint during the opening conference.

Notification Delay to Complainants

Finding 19-02:

Of the 21 complaint case files reviewed, 11 (52%) did not contain documentation that the complainant and/or employee representative was informed of a delay in issuing the Notice of Violation (NOV).

Recommendation 19-02:

PESH should ensure that the complainant and/or employee representative are informed of any delay in issuing the NOV as stated in their Field Operations Manual (FOM) Chapter IX A.9.c - "A delay of more than 30 days following the inspection would warrant such notification."

b) Fatalities

During FY 2019, the number of state and local government worker fatalities reported to PESH was 11 compared to 17 reported in FY 2018. One day response time to fatalities in FY 2019 was 100% compared to 92.31% in FY 2018 (SAMM#10). Two closed fatality case files were reviewed during this evaluation.

Next-of-Kin (NOK)

One observation noted in the FY 2018 Follow-up FAME Report (FY 2018-OB-01) was that case files lacked evidence/documentation that the NOK was notified of PESH's involvement and/or was notified of the results of PESH's investigation. Both fatality case files (100%) contained documentation that NOK was notified of involvement as well as the closeout letter. This observation is closed.

c) Targeting and Programmed Inspection

PESH conducted 1,568 inspections in FY 2019 – 1% above the projected goal of 1,550 and slightly less than the 1,626 inspections conducted in FY 2018. Safety staff conducted 922 inspections (16% below the goal) compared to the industrial hygiene staff who conducted 646 inspections (44% above the goal) – (SAMM #7). The decline in safety inspections can be attributed to the reduction in the number of safety compliance officers. In FY 2018, PESH had 23 safety CSHOs compared to 18 in FY 2019.

PESH focused its inspection resources within the following three state and local government agencies targeted for enforcement interventions:

- Police Protection – 69 inspections
- Fire Service – 159 inspections
- Nursing Care Facilities/Hospitals – 23 inspections

The FRL for percent in-compliance for safety inspections is +/- 20% of the three-year national average of 30.30%, which equals a range of 24.24% to 36.36%. PESH's percent in-compliance for safety is 20.38% which is lower than the FRL. The FRL for percent in-compliance for health inspections is +/- 20% of the three-year national average of 36.12% which equals a range of 28.90% to 43.35%. PESH's percent in-compliance for health is 40.68% which is within the FRL (SAMM #9).

During FY 2019 and FY 2018 there were no significant cases noted.

d) Citations and Penalties

PESH issued 3,183 violations in FY 2019 compared to 3,693 violations issued in FY 2018 – a decrease of 510 (14%) violations. Of the 3,183 violations issued, 2,408 were serious, one was willful, 44 were FTA, 17 were repeats, and the remaining 713 were other-than-serious (FY 2019 NY SOAR).

PESH's violations continue to be above average. The FRL for the average number of violations per inspection with violations by violation type is +/- 20% of the three-year national average of 1.79 for serious/willful/repeat (S/W/R) violations which equals a range of 1.43 to 2.15. PESH's S/W/R average is 4.03 violations which is above the FRL range. The FRL for other-than-serious (OTS) violations is +/- 20% of the three-year national average of 0.97 which equals a range of 0.78 to 1.16. PESH's OTS average is 1.20 which is also above the FRL range (SAMM #5).

Violations for the most part appeared to be classified and grouped appropriately. PESH does not issue monetary penalties except in cases of FTA violations. During FY 2019, PESH issued 44 FTAs and collected a total of \$25,661.00 in penalties (FY 2019 NY SOAR).

Adequate Evidence to Support Violations/Missed Violations

Observations in the FY 2018 Follow-up FAME Report (FY 2018-OB-02 and FY 2018-OB-03) noted that there was inadequate evidence to support violations and there were missed violations. Of the 64 enforcement case files reviewed, 44 had citations issued. A review of case files with violations showed a continued improvement in documentation to support the violations from previous years and there was no missed violations. These two observations were closed.

e) Abatement

The review of case files during this audit revealed that adequate verification/evidence of abatement was being obtained in the case files that had citations. Follow-up inspections were performed when indicated.

Petition for Modification of Abatement (PMA)

An observation from the FY 2018 Follow-up FAME Report (FY 2018-OB-04) noted that PMAs were being granted without the employer providing the reason why the PMA was needed, nor were the interim steps necessary to protect workers provided and/or adequate. During this review, four case files with PMAs were reviewed and all four (100%) had the required information to grant the extension. This observation was closed.

f) Worker and Union Involvement

PESH continued to follow proper procedures outlined in their FOM with regard to appropriate notification being delivered to workers and their union representatives. Of the

64 case files reviewed, 54 (84%) involved unions. Union representation was involved in 99.36% (SAMM #13) aspects of the inspection process. In those few cases where the union was not available during the inspection, the case file contained documentation of contact with the representative, or that the union representative declined to participate in the inspection process.

3. REVIEW PROCEDURES

a) Informal Conferences

PESH has no first instance penalties and therefore conducted very few informal conferences. Proper procedures are followed if an informal conference is requested by an employer and if no settlement can be reached, the case is turned over to the Industrial Board of Appeals (IBA). During FY 2019, seven informal conferences were conducted compared to six informal conferences in FY 2018.

b) Formal Review of Citations

Any investigation that is contested is turned over to the IBA. During FY 2019, PESH reported zero new contested cases unlike the six new contested cases reported during FY 2018.

4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

In accordance with 29 CFR 1902, State Plans are required to adopt standards and Federal Program Changes (FPCs) within a six-month timeframe. State Plans that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. During this period, PESH responded in a timely manner with the required notice of intent to adopt. The tables below provide a complete list of the federal directives and standards which required action during this performance period:

a) Standards Adoption

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Standards Improvement Project - Phase IV 1904,1910,1915,1926 (5/14/2019)	7/13/2019	7/12/2019	Y	Y	11/14/2019	1/15/2020

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Implementation of the 2019 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1902,1903 (1/23/2019)	3/23/2019	2/1/2019	N	N/A	7/23/2019	This rule is not applicable to NY PESH as they do not issue penalties
Final Rule on Crane Operator Certification Requirements 29 CFR Part 1926 (11/9/2018)	1/9/2019	1/8/2019	Y	Y	5/9/2019	5/9/2019

b) Federal Program Change (FPC) Adoption

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<i>Adoption Required</i>						
National Emphasis Program on Trenching and Excavation CPL 02-00-161 (10/1/2018)	11/30/2018	10/13/2018	Y	Y	4/1/2019	10/15/2018
<i>Equivalency Required</i>						
Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment CPL 02-01-061 (5/22/2019)	7/21/2019	7/18/2019	Y	Y	11/22/2019	7/18/2019
Shipyard Employment "Tool Bag" Directive CPL 02-00-162 (5/22/2019)	7/21/2019	7/18/2019	Y	Y	11/22/2019	7/18/2019
Enforcement Guidance for Personal Protective Equipment (PPE) in Shipyard Employment CPL 02-01-060 (5/22/2019)	7/21/2019	7/18/2019	Y	Y	11/22/2019	7/18/2019

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Site-Specific Targeting 2016 (SST-16) CPL 02-18-01 (10/16/2018)	12/15/2018	12/10/2018	N	N/A	4/16/2019	This rule is not applicable to SLG State Plans since the NAICS codes do not apply
<i>Adoption Encouraged</i>						
Alternative Dispute Resolution (ADR) Processes for Whistleblower Protection Programs CPL 02-03-008 (2/4/2019)	4/5/2019	4/4/2019	N	N	N/A	Adoption not required

5. VARIANCES

Variance requests were not received or processed during FY 2019 and FY 2018 (NY SOARs FY 2019 and FY 2018).

6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

One hundred percent (100%) of all inspections conducted by PESH occurred in the state and local government workplaces during FY 2019 and FY 2018 (SAMM #6). PESH does not contain provisions for the issuance of monetary penalties for state and local government employers found not to be in-compliance with applicable standards on a first instance basis (except in cases when FTA notices are issued). If an employer incurs penalties for violations, the employer may have an informal conference with PESH or can contest the penalties and be heard by the New York State Industrial Board of Appeals (IBA).

7. WHISTLEBLOWER PROGRAM

PESH investigated 24 allegations of workplace retaliation during FY 2019 – the same number as in FY 2018. During this evaluation period, OSHA Region II Assistant Regional Administrator for the Whistleblower Protection Programs reviewed 15 case files (13 from FY 2019 and two from FY 2018). Of the 15 case files reviewed, five were administratively closed (no full field investigation), and ten were docketed full field investigations. Of the ten docketed files reviewed, seven (70%) were dismissed, two were withdrawn, and one was settled.

Timely Screening and Docketing

Case files contained evidence that complaints were screened and docketed in a timely fashion thereby affording complainants and respondents their due process rights. PESH was successful in closing this finding from the FY 2018 Follow-up FAME Report (FY 2018-02) by implementing procedures that have resulted in a more timely docketing or administratively closing of complaints.

Sound Legal Reasoning

An observation from FY 2018 Follow-up FAME Report (FY 2018-OB-06) noted that determinations reached were not based on substantive evidence and sound legal reasoning. The case files reviewed during this evaluation period showed that PESH conducted the investigations appropriately and applied sound legal reasoning when analyzing the evidence. Determination letters were very well-written. This observation was closed.

Settlements

A best practice observed during the comprehensive review was as follows: after the review of the investigation and once the case file is completed by the program manager, the supervisor adds a memo to the file detailing the review process. The supervisor also prepares the determination letter which includes a thorough explanation of the investigative findings and conclusion. When adjusted for incorrectly recorded determinations, determinations rates were appropriate program-wide. Additionally, investigators are engaging in settlement negotiations and settling complaints securing relief for complainants. PESH's program and policies are at least as effective as OSHA's and PESH was successful in closing observation (FY 2018-OB-05) from the FY 2018 Follow-up FAME Report regarding workplace retaliation settlement procedures.

Case File Documentation and Organization

Observation 19-03:

Worker retaliation case files did not accurately reflect the appropriate case determination, document the correct closure date, accurately record the complaint filing date, or document that supervisory review was conducted prior to the issuance of determination letters. In all 15 (100%) of the cases reviewed, supervisory review was documented before the case file was filed away and due process rights of the parties were not affected.

- In three of the 15 (20%) case files reviewed, determination letters had the wrong determination noted (this was noted). This was not due to a data entry error, but instead to a misunderstanding of the terminology. It did not impact the complainant's right of appeal or either parties' due process rights.
- In three of the five (20%) administratively closed cases, closure dates (noted in IMIS) predated the issuance date of the determination letter, inferring supervisory review of the investigation had not yet been completed. In all case types, both

docketed investigations and administrative closures, the determination date should match the date the determination letter was issued by the program manager.

- Three of 15 (20%) case files did not accurately record the complaint filing date. This did not impact PESH's ability to investigate the claim. However, an inaccurate filing date could negatively affect both the complainant's and respondent's due process rights if the complaint was later determined to have been filed outside of the statute of limitations (30 days) or resulted in litigation.
- One of 15 (7%) case files did not contain witness interview notes or memos to file recounting the relevant information. It is unclear how many case files did not contain internal correspondence.

Federal Monitoring Plan 19-03:

In FY 2020, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

No CASPAs were filed against PESH during FY 2019 and FY 2018 (NY SOAR, FY 2019 and FY 2018).

9. VOLUNTARY COMPLIANCE PROGRAM

PESH does not administer a Voluntary Compliance Program.

10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM

PESH's state and local government workers consultation program failed to meet its Annual Performance Plan (APP) projections in FY 2019, but exceeded its projections in FY 2018. PESH conducted 237 consultation visits during FY 2019 – 33 visits (12%) below the projected goal of 270 visits. Retirements and transfers of four consultants by the end of FY 2019 resulted in staffing levels falling from 10 to six consultants. In FY 2018, 344 consultation visits were conducted – 74 visits (27%) greater than the projected 270 visits (NY SOAR, FY 2019 and FY 2018). The percentage of visits with hazards abated within a timely manner increased from 97.91% in FY 2018 to 98.99% in FY 2019 (MARC #4a). Twenty-two (22) consultation case files were reviewed. The case files were broken down as follows: five training/assistance (T/A), one full service, and 16 limited service visits.

Consultation Policy and Procedures Manual (CPPM)

Observation 19-OB-04 (FY 2019-OB-03 and FY 2018-OB-07):

Written policies and procedures for NY PESH's on-site consultation program are not equivalent or at least as effective as OSHA's latest CPPM (CSP 02-00-003) dated

November 19, 2015. Examples of where NY PESH's (September 20, 2005) Consultation Policy and Procedures Manual (CPPM) differs from OSHA's CPPM include, but are not limited to, the following:

- If the employer elects to have union representation, representatives may participate in the on-site visit. (OSHA's FY 2015 CPPM requires unions to be invited to participate in the on-site visit.)
- There is no requirement to provide a copy of the list of identified hazards to the union. (OSHA's FY 2015 CPPM requires that the union be provided with a copy of the list of identified hazards.)
- In both NY PESH's CPPM and the report to the employer, there is no requirement to post the list of hazards identified at the worksite. (OSHA's FY 2015 CPPM requires the list of hazards be posted at the worksite for at least three days or until the hazard is abated/corrected.)
- There is no evaluative process for granting of abatement extensions, nor is there a requirement for providing an updated list of hazards after a granted extension. (OSHA's FY 2015 CPPM requires the employer to meet four criteria for an extension and when granted the consultation program must prepare and provide an updated list of hazards.)
- There is no requirement to submit a list of hazards to the employer and the employee representative no later than 20 calendar days from the closing conference date as stated in OSHA's FY 2015 CPPM.
- NY PESH never adopted FORM 33; however, an evaluation of the worksite's Safety and Health Management System (SHMS) is required for full service consultation visits. All three (100%) of the full service visit case files reviewed were missing a SHMS evaluation.

Federal Monitoring Plan 19-OB-04:

PESH is currently in the process of updating its CPPM and is making progress. OSHA will continue to work with PESH in FY 2020 to update its CPPM to reflect the policies and procedures in OSHA's CSP 02-00-003 including, but not limited to, the following:

- Requirement to invite union representation to participate in the on-site visit.
- Union and/or worker representative will be provided a copy of the list of identified hazards.
- The list of identified hazards will be posted at the worksite for at least three days or until the hazard is abated/corrected.

- A limited number of case files will be selected randomly and reviewed to determine if PESH is conducting the required SHMS evaluations and including such documentation in the case files.
- Employer, union, and/or worker representative will be provided a list of hazards no later than 20 calendar days from the closing conference date.
- PESH will require an evaluation of the worksite's SHMS for full service consultation visits.

Appendix A – New and Continued Findings and Recommendations

New York PESH FY 2019 Comprehensive FAME Report

FY 2019-#	Finding	Recommendation	FY 2018-#
FY 2019-01	<p><i>OSHA Information System (OIS) Data/Information</i></p> <p>Five enforcement health case files (where sampling was performed) were reviewed resulting in finding that data/information was incomplete and/or not entered into OIS. For example:</p> <ul style="list-style-type: none"> • Pre-and post-calibration information was missing in all five (100%) case files reviewed. • Sampling data collected was not entered into OIS in all five (100%) case files reviewed. 	<p>PESH enforcement should ensure that when sampling is performed, complete data is entered in the OIS system on the appropriate form.</p>	FY 2018-01
FY 2019-02	<p><i>Notification Delay to Complainants and/or Worker Representatives</i></p> <p>Of the 21 complaint case files reviewed, 11 (52%) did not contain documentation that the complainant and/or worker representative was informed of a delay in issuing the Notice of Violation (NOV).</p>	<p>PESH should ensure that the complainant and/or employee representative are informed of any delay in issuing the NOV as stated in their Field Operations Manual (FOM) Chapter IX A.9.c - "A delay of more than 30 days following the inspection would warrant such notification."</p>	

Appendix B – Observations Subject to New and Continued Monitoring

New York PESH FY 2019 Comprehensive FAME Report

Observation # FY 2019-OB-#	Observation# FY 2018-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2019-OB-01	FY 2018-OB-08	<p><i>Safety Lapse Time</i></p> <p>In FY 2019, the average safety lapse time (SAMM 11) for citations was calculated at 89.61 days which is above the FRL range of 38.08 days to 57.13 days.</p>	In FY 2020, OSHA will continue to monitor this issue utilizing quarterly SAMM reports.	Continued
FY 2019-OB-02	FY 2018-OB-09	<p><i>Health Lapse Time</i></p> <p>In FY 2019, the average health lapse time (SAMM11) for citations was calculated at 89.90 days which is above the FRL range of 28.90 days to 43.35 days.</p>	In FY 2020, OSHA will continue to monitor this issue utilizing quarterly SAMM reports.	Continued
FY 2019-OB-03		<p><i>Worker Retaliation Case File Documentation and Organization</i></p> <p>Worker retaliation case files did not accurately reflect the appropriate case determination, document the correct closure date, accurately record the complaint filing date, or document that supervisory review was conducted prior to the issuance of determination letters. In all 15 (100%) cases reviewed, supervisory review was documented at some point before the case file was filed away and due process rights of the parties were not affected.</p> <ul style="list-style-type: none"> • In three of the 15 (20%) case files reviewed, determination letters had the wrong determination noted. The incorrect determination was also noted in IMIS. • In three of the five (20%) administratively closed cases, closure dates (noted in IMIS) predated the issuance date of the determination letter, inferring supervisory review of the investigation had not yet been completed. • Three of 15 (20%) case files did not accurately record the complaint filing date. • One of 15 (7%) case files did not contain witness interview notes or memos to file recounting the relevant information. 	In FY 2020, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.	New

Appendix B – Observations Subject to New and Continued Monitoring

New York PESH FY 2019 Comprehensive FAME Report

Observation # FY 2019-OB-#	Observation# FY 2018-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2019-OB-04	FY 2018-OB-07 FY 2017-OB-07	<p><i>Consultation Policy and Procedures Manual (CPPM)</i> Written policies and procedures for NY PESH’s on-site consultation program are not equivalent or at least as effective as OSHA’s latest CPPM (CSP 02-00-003) dated November 19, 2015. Examples where NY PESH’s (September 20, 2005) CPPM differs from OSHA’s CPPM include, but are not limited to, the following:</p> <ul style="list-style-type: none"> • If the employer elects to have union representation, representatives may participate in the on-site visit. (OSHA’s FY 2015 CPPM requires unions to be invited to participate in the on-site visit.) • There is no requirement to provide a copy of the list of identified hazards to the union. (OSHA’s FY 2015 CPPM requires that the union be provided with a copy of the list of identified hazards.) • In both NY PESH’s CPPM and the report to the employer, there is no requirement to post the list of hazards identified at the worksite. (OSHA’s FY 2015 CPPM requires the list of hazards be posted at the worksite for at least three days or until the hazard is abated/corrected.) • There is no evaluative process for granting of abatement extensions, nor is there a requirement for providing an updated list of hazards after an extension is granted.. (OSHA’s FY 2015 CPPM requires the employer to meet four criteria for an extension and when granted the consultation program must prepare and provide an updated list of hazards.) 	<p>In FY 2020, OSHA will work with PESH to update its CPPM to reflect the policies and procedures in OSHA’s CSP 02-00-003 including, but not limited to, the following:</p> <ul style="list-style-type: none"> • Requirement to invite union representation to participate in the on-site visit. • Union and/or worker representative will be provided a copy of the list of identified hazards. • The list of identified hazards will be posted at the worksite for at least three days or until the hazard is abated/corrected. • A limited number of case files will be selected randomly and reviewed to determine if PESH is conducting the required SHMS evaluations and including such documentation in the case files. 	Continued

Appendix B – Observations Subject to New and Continued Monitoring

New York PESH FY 2019 Comprehensive FAME Report

Observation # FY 2019-OB-#	Observation# FY 2018-OB-#	Observation	Federal Monitoring Plan	Current Status
		<p><i>Consultation Policy and Procedures Manual (CPPM) – (Cont'd)</i></p> <ul style="list-style-type: none"> • There is no requirement to submit a list of hazards to the employer and the employee representative no later than 20 calendar days from the closing conference date as stated in OSHA’s FY 2015 CPPM. • NY PESH never adopted FORM 33; however, an evaluation of the worksite’s Safety and Health Management System (SHMS) is required for full service consultation visits. All three (100%) of the full service visit case files reviewed were missing a SHMS evaluation. 	<ul style="list-style-type: none"> • Employer, union, and/or worker representative will be provided a list of hazards no later than 20 calendar days from the closing conference date. • PESH will require an evaluation of the worksite’s SHMS for full service consultation visits. 	
	FY 2018-OB-01 FY 2017-OB-01	<p><i>Next-of-Kin (NOK) Involvement/NOK Notification of Investigation Results</i></p> <p>Of the 16 fatality case files reviewed, two (13%) lacked evidence/documentation that NOK was notified of PESH’s involvement, and three (19%) lacked evidence that the NOK was notified of the results of PESH’s investigation.</p>		Closed
	FY 2018-OB-02 FY 2017-OB-02	<p><i>Inadequate Evidence to Support Violations</i></p> <p>In five of the 38 (13%) case files reviewed with violations, evidence to support the violations was inadequate.</p>		Closed
	FY 2018-OB-03 FY 2017-OB-03	<p><i>Missed Violations</i></p> <p>Injury/illness data was not collected and/or cited nor was there documentation that the logs were reviewed by CSHOs for injury/illness trends in 14 of the 62 (23%) case files reviewed that required the SH 900 logs. In one of the health case files reviewed, there were missed opportunities to evaluate the exposures to chlorine during cylinder change outs and to issue citations under the respiratory protection standard.</p>		Closed

Appendix B – Observations Subject to New and Continued Monitoring

New York PESH FY 2019 Comprehensive FAME Report

Observation # FY 2019-OB-#	Observation# FY 2018-OB-#	Observation	Federal Monitoring Plan	Current Status
	FY 2018-OB-04 FY 2017-OB-04	<p><i>Petition for Modification of Abatement (PMA)</i></p> <p>In two of the eight (25%) case files reviewed that had PMAs, the PMAs were granted without the employer providing the reason why the PMA was needed, nor were the interim steps necessary to protect workers provided and/or adequate.</p>		Closed
	FY 2018-OB-05 FY 2017-OB-05	<p>PESH did not follow its procedures detailed in the Field Operations Manual (FOM) <i>Chapter X, Settlements</i>. For example:</p> <ul style="list-style-type: none"> • In one of the six (17%) administratively case files reviewed, PESH did not review the settlement agreements to determine if they were fair, adequate, reasonable, and consistent with the purpose and intent of the New York State Labor Law. • In two of the eight (21%) docketed case files reviewed, PESH did not ensure these settlements adhered to the criteria for approval of third party agreements. PESH failed to determine if the settlement agreements prohibited complainants from engaging in future protected activity, if the agreements restricted complainants from participating in investigations or testifying in proceeding relating to matters that arose during complainant’s employment (gag order), and if complainant’s decision to enter into the agreement was voluntary. 		Closed

Appendix B – Observations Subject to New and Continued Monitoring

New York PESH FY 2019 Comprehensive FAME Report

Observation # FY 2019-OB-#	Observation# FY 2018-OB-# FY 2017-OB-06	Observation	Federal Monitoring Plan	Current Status
	FY 2018-OB-06 FY 2017-OB-06	<p><i>Sound Legal Reasoning</i></p> <p>In two of the 14 (14%) workplace retaliation case files, the determination reached was not based on substantive evidence in the case file and sound legal reasoning. One of the dismissed cases alleged three separate adverse actions. Only one of the three was investigated, and the complaint was dismissed. Absent an investigation of the two other alleged adverse actions, it is unclear if the determination was appropriate. Another administratively closed complaint remained in the screening phase for more than five months although the case file indicated a limited investigation had been initiated. It did not appear that the respondent was notified of the allegation leaving it unclear if the appropriate determination was reached.</p>		Closed

Appendix C - Status of FY 2018 Findings and Recommendations

New York PESH FY 2019 Comprehensive FAME Report

FY 2018-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status
FY 2018-01	Health case files had incomplete data/information and/or data/information was not entered into OIS (e.g., case files were lacking pre-and post-calibration information, sampling data collected was not in OIS).	PESH enforcement should ensure that when sampling is performed, necessary data/information is documented in the case files and appropriate data/information is entered in the OIS.	PESH Industrial Hygiene (IH) management reinforced proper documentation and procedures regarding IH sampling to IH staff. In addition, the annual internal case file audit forms were revised to ensure adherence of proper documentation and procedures. Corrective actions were reviewed and reinforced in the IH breakout session during the mandatory PESH meeting in Albany April 16 and 17, 2019. Additionally, periodic meetings are conducted with staff to ensure progress and consistency across districts.	Not Applicable	Open (As of September 30, 2019)
FY 2018-02	Worker retaliation case files did not contain evidence that complaints were docketed in a timely fashion.	PESH should ensure that case files are properly screened and docketed in a timely manner in accordance with its Field Operations Manual (FOM) Chapter X Discrimination Complaints.	Discrimination program management is closely monitoring intake and assignment of new cases to ensure timely screening, docketing/dismissal, and notification of complainants. The most recent discrimination staff conference was conducted on May 22, 2019 to reinforce intake and investigation procedures and to discuss report writing and analysis. Periodic meetings are conducted with staff to ensure progress and consistency across districts.	May 22, 2019	Completed

Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

New York PESH FY 2019 Comprehensive FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: New York - PESH			FY 2019	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	5.91	10	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	5.15	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	2.20	1	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	0.30	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 4.03	+/- 20% of SWRU: 1.79	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.43 to 2.15 for SWRU and from 0.78 to 1.16 for OTS.
		Other: 1.20	+/- 20% of Other: 0.97	
6	Percent of total inspections in state and local government workplaces	100%	100%	Since this is a State and Local Government State Plan, all inspections are in state and local government workplaces.

Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

New York PESH FY 2019 Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
7	Planned v. actual inspections – safety/health	S: 922	+/- 5% of S: 1,100	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1,045 to 1,155 for safety and from 427.50 to 472.50 for health.
		H: 646	+/- 5% of H: 450	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	N/A	+/- 25% of \$2,871.96	N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.
	a. Average current serious penalty in private sector (1-25 workers)	N/A	+/- 25% of \$1,915.86	N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.
	b. Average current serious penalty in private sector (26-100 workers)	N/A	+/- 25% of \$3,390.30	N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.
	c. Average current serious penalty in private sector (101-250 workers)	N/A	+/- 25% of \$4,803.09	N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.
	d. Average current serious penalty in private sector (greater than 250 workers)	N/A	+/- 25% of \$5,938.59	N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.

Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

New York PESH FY 2019 Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
9	Percent in compliance	S: 20.38%	+/- 20% of S: 30.30%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 24.24% to 36.36% for safety and from 28.90% to 43.35% for health.
		H: 40.68%	+/- 20% of H: 36.12%	
10	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.
11	Average lapse time	S: 89.61	+/- 20% of S: 47.61	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 38.08 to 57.13 for safety and from 45.78 to 68.68 for health.
		H: 89.90	+/- 20% of H: 57.23	
12	Percent penalty retained	N/A	+/- 15% of 67.44%	N/A – The State Plan did not impose any monetary penalties in FY 2019. The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 56.42% to 76.33%.
13	Percent of initial inspections with worker walk around representation or worker interview	99.36%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	6%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	4%	+/- 20% of 23%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 18.40% to 27.60%.
16	Average number of calendar days to complete an 11(c) investigation	375	90	The further review level is fixed for all State Plans.

Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

New York PESH FY 2019 Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
17	Percent of enforcement presence	N/A	+/- 25% of 1.23%	N/A – This is a State and Local Government State Plan and is not held to this SAMM.

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 12, 2019 as part of OSHA's official end-of-year data run.

Appendix E - FY 2019 State OSHA Annual Report (SOAR)

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**PESH Federal Fiscal Year 2019
State OSHA Annual Report
(SOAR)**

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New York PESH FY 2019 Comprehensive FAME Report

Annual Performance Plan Activities FFY 2019

The Division of Safety and Health (DOSHS) is one of five units within Worker Protection in the New York State Department of Labor. The Division of Safety and Health administers ten programs to protect the public and working men and women of New York from hazards, accidents and injuries; one of which is the Public Employee Safety and Health (PESH) Bureau. The PESH Bureau was created in 1980 and oversees workplace protection of public workers at the state and local levels through the enforcement of OSHA and specific State regulations. Public sector employers include State, County, City, Town, Village governments, Public Authorities, School Districts and Paid and Volunteer Fire Departments. The PESH Bureau provides protection through two main functions - enforcement and consultation services.

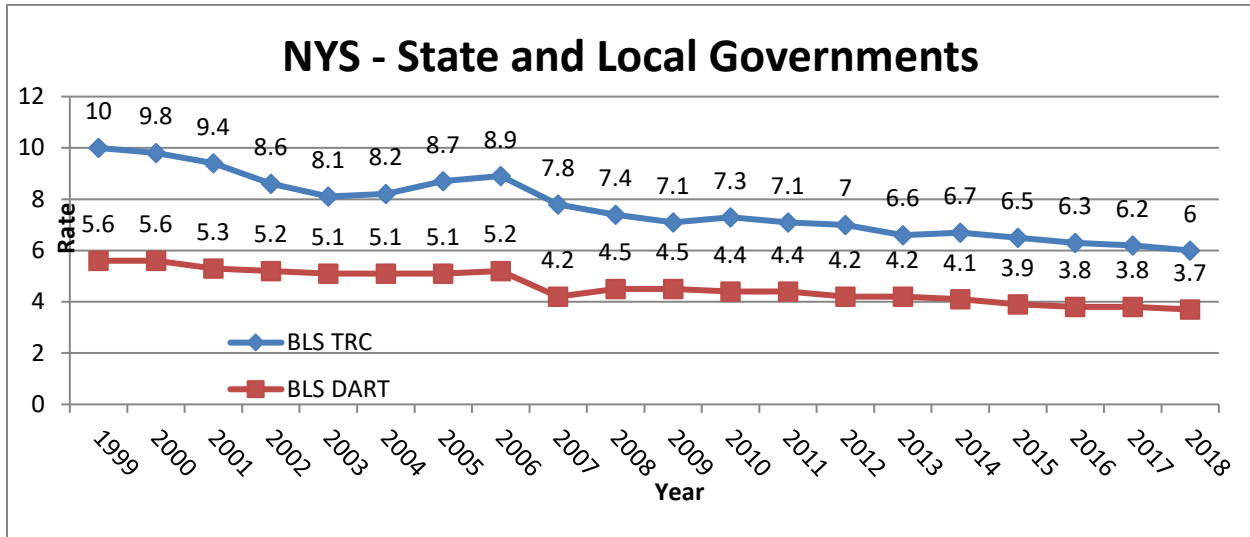
The PESH Bureau instituted a Strategic Plan in 1998. The PESH Strategic Plan focuses on select industries which have high injury and illness or Days Away, Restricted or Transfer (DART) rates. The current PESH Strategic Plan consists of three distinct committees including Fire Service, Police Protection, and Healthcare (specifically nursing homes and general and surgical hospitals). Each committee identifies the cause(s) of injuries and illnesses to workers in their sector and focuses on building partnerships with labor and management in the development of strategies to reduce the occurrence and/or seriousness of these injuries and illnesses.

The PESH Bureau continues to make significant progress in protecting New York State's public workers and promoting a safe and healthy workplace. The activities and accomplishments of the PESH Bureau and the Strategic Plan committees are identified in this report. The following are noteworthy statistical highlights and trends.

Based on data from the NYS Department of Labor Office of Research and Statistics, the Total Recordable Injury and Illness Incident Rate (TRC) for Calendar Year (CY) 2018 for state and local government employment was 6.0 per 100 full-time equivalent workers. This is a 3.2% decrease from 2017 when it was 6.2. The DART rate for CY 2018 was 3.7 - a 2.6% decrease from CY 2017 which was 3.8. Both the Total Recordable Case and the DART Rates have experienced a consistent downward trend of declining rates since the inception of the Strategic Plans in 1998, when the TRC and DART were 10.5 and 6.0 respectively. Overall the TRC Rate has decreased 43% and the DART Rate has decreased 38% over this period.

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TRCR – Total Recordable Case (Injury and Illness) Rate
 DART – Days Away, Restricted, or job Transfer Rate

*Based on BLS data

During Federal Fiscal Year (FFY) 2019, thirty-four (34) different PESH Compliance Safety and Health Officers (CSHO’s) conducted 1,567 inspections, compared to 1,637 inspections in FFY 2018 conducted by forty-three (43) CSHO’s. Eighteen (18) safety staff conducted 924 inspections, compared to 1,046 inspections in FFY 2018 conducted by twenty-three (23) safety staff. Sixteen (16) industrial hygiene staff conducted 643 inspections, compared to 591 inspections in FFY 2018 conducted by twenty (20) industrial hygiene staff.

There were a total of 3183 enforcement violations issued in FFY 2019 compared to the 3,693 violations issued in FFY 2018. The number of violations per inspection was 2.0 in FY2019, compared to 2.27 in FY2018.

Of the total number of violations issued during FY 2019 forty-four (44) were Failure to Abate (FTA), one (1) willful violation, seventeen (17) were repeat violations, 713 were non-serious and 2,408 were serious violations. There were 179,420 workers covered by the inspections performed in FFY 2019.

PESH investigated 375 complaints in FFY 2019, compared to 364 complaints in FFY 2018, and 302 complaints in FFY 2017 - a 24% increase from FFY 2017. The number of inspections have declined, due in large part to reduced staffing, as the Federal Grant has not kept pace with increased costs. This factor along with the increase in complaints each year has resulted in the percentage of complaint inspections of the total yearly inspections to increase from 17% in FFY 2017 (1,761 inspections), to 22% in FFY 2018, to 24% in FFY 2019.

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PESH performed eleven(11) Fatality and/or catastrophies (FATCAT) investigations in FFY 2019 compared to seventeen (17) investigations in FFY 2018.

PESH investigated twenty-four (24) discrimination cases in FFY 2019, the same number as in FFY 2018. Five (5) of these cases were dismissed / non-merit, and one (1) case was settled. Eighteen (18) cases are pending, three (3) of which appear to be merit cases.

During FFY 2019, PESH conducted 237 consultations compared to the 344 consultations in FFY 2018, a 31% decrease. Due to retirements and transfers, by the end of FFY 2019 there were six (6) consultants, down from full staffing of ten (10) consultants.

PESH tracks Compliance Assistance activities for both enforcement and consultation. During FFY 2019, there were 191 Compliance Assistance visits made by nine (9) PESH consultants and ten (10) compliance assistance visits made by PESH enforcement staff. The total compliance assistance activities for FFY 2019 were 201 compared to 204 visits made in FFY 2018. The OIS system captures data regarding the total number of employees and employers affected for enforcement only – in FFY 2019 the number of employees reached was 1024.

There were no new contested cases in FFY 2019. In FFY 2018, there were six (6) new contested cases.

Total PESH penalties billed during FFY 2019 were \$244,594.00. Penalty collection for the year totaled \$25,661.00.

Progress toward Strategic Plan Goals

Strategic Goal 1

The overall goal was to continue developing and implementing strategies to improve workplace safety and health for all public employees, with special focus on those in the select strategic plan industries. The Strategic Plan Performance Goals for the 5-year plan beginning in FFY 2016 were:

- Decrease the Injury and Illness Rate by 5% over 5 years in NAICS 922120 (Police Protection).
- Decrease Injury and Illness Rate by 5% over 5 years in NAICS 922160 (Fire Service)
- Decrease the Lost Work Day Rate by 5% over 5 years in the following healthcare sectors:
 - o NAICS 623110 (Nursing Care Facilities)
 - o NAICS 622110 (Hospitals)

Police Departments (NAICS 922120)

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Strategic Goal: Improve workplace safety and health for all public employees.

Performance Goal #1A: Reduce Injuries and Illnesses by 5% over 5 years in NAICS 922120.

Baseline: 2012

Activity Measures:

Partnerships – This committee’s initial focus was on building partnerships with the NYS Sheriff’s Association, the various county level sheriff’s departments and their related associations. Over the last two years, the committee has worked to reach a new audience by engaging with some of the smaller village and city law enforcement agencies. Existing partnerships with the NYS Sheriff’s Association was strengthened through two-way information sharing and participation at the Annual Sheriff’s Association Expo. This year new partnerships were formed through NYSDOT’s Traffic Incident Management Symposium. This partnership will be further developed in the coming years.

Injury Data Collection and Analysis – The committee will use BLS data to track Injury and Illness as well as DART rates for local government police agencies. The BLS data will also be used to identify trends and patterns where the committee can focus their efforts on developing fact sheets or other law enforcement specific resources.

The Primary Outcome Measure of decreasing the Total Recordable Injury Rate in police protection agencies by 1% per year has been exceeded as shown in the table below.

The OSHA OIS system was used to assemble Consultation, Inspection and Compliance Assistance data.

Inspections – There were 69 Enforcement Inspections conducted in FFY 2019.

Consultations – There were ten (10) Consultation visits in FFY 2019.

Outreach– There were a total of nine (9) Compliance Assistance Visits completed during FFY 2019.

Primary Outcome Measures: Police Service Injury and DART Rates

Year	Baseline (2012)	2013	2014	2015	2016	2017	2018	% Reduction from Baseline Year
Injury and Illness Rate	16.9	15.2	15.2	14.9	12.6	NA**	NA**	- 25.4
DART Rate	7.5	7.1	7.0	7.1	6.1	NA**	NA**	- 18.7

**Based on BLS Data*

*** Data not available due to a BLS freeze on NAICS 92 data for data integrity reason*

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Intermediate Outcome Measures:

Police Service FFY Activities

Measure Description	2012 Baseline	FFY 2019
Inspection Visits	113	69
Consultation Visits	6	10
Outreach and Technical Assistance Visits	3	9

** Information obtained from OIS*

Police Protection

Introduction:

FFY 2019 was the fourth year of New York State Department of Labor's, FY 2016 – 2020 Five-Year Strategic Plan. The main goal of the Police Protection Strategic Plan is to reduce the Total Recordable Injury Rate in county and local police protection agencies by 1% per year or 5% over the next 5 years. This committee focuses on injury and illness reduction in local and county law enforcement departments throughout New York State.

Partnership Activity:

Partnerships within the law enforcement community provide an enhanced opportunity for committee members to share outreach materials with a larger audience. Three (3) of our plan members participated as exhibitors at the NYSDOT TIMposium (Traffic Incident Management Symposium) held at the NYS Preparedness Training Center in Oriskany on Saturday, May 4, 2019. This venue provided favorable and productive interactions with members of the law enforcement and police community, to discuss and share our resource materials, and promote our Consultation Program. Strat Plan members attended presentations, including Rural TIM, NYSP accident reconstruction using drones, and TIM events involving farm animals. The interactions and the presentations helped to gain better insight into the scope of police activities, with the goal of helping to minimize risk. Strat Plan members have taken steps to further develop this relationship, working to participate as presenters with other state agencies at the next event in 2 years.

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During FFY 2019, partnerships were formed with:

Somers Town Police Department
Mechanicville City Police Department
Madison County Sheriff's Office

Our group has also become involved with a newly formed statewide organization, the Empire State Safety Association (ESSA). ESSA is comprised predominantly of County and Municipal Safety Officers, Human Resource Managers, Risk Managers, Workers' Compensation Administrators, Highway and DPW Superintendents, and County Sheriff Representatives. The group organizes quarterly Safety Education Days and has already developed an E-Roundtable program whereby members can ask for assistance on any safety and health topic, issue or question, and receive helpful responses from other members, in the form of knowledge, experience, and program materials.

Injury Data Collection & Analysis:

Historically, the committee has utilized Injury and Illness data obtained from employer's injury and illness logs (SH 900's and SH 900.1's). During FFY 2019, the group made a comparison of historical data to the available NYSDOL BLS data, specific to local police departments, and the results were very similar. The committee decided that for future reports BLS data will be used to provide annual data for Total Injury and Illness Rate and the DART (Days Away, Transfer or Restriction). Each year much of the efforts of committee members were spent on soliciting and compiling injury and illness logs and summaries. Utilizing the readily available NYS DOL BLS data will free up additional committee member's time to work closer with employers on injury and illness reduction strategies. Both data sets (BLS and data obtained from employer's injury and illness logs (SH 900 and SH 900.1 reports) show a consistent history of lost work time reduction rates for years 2013, 2014, 2015, 2016, 2017 and 2018 - when compared to the baseline of 2012.

Inspections:

There was a total of 69 inspections performed during the 2019 FFY, this is a decrease from the baseline year of 2012.

Consultations:

There was a total of ten (10) consultations performed during the same period, compared to six (6) from the 2012 baseline year, this is a 14% increase.

Outreach:

There were a total of nine (9) compliance assistance visits in FFY 2019, compared to five (5) compliance assistance activities conducted during FFY 2018, and three (3) in the baseline year of 2012.

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Training:

Law enforcement agencies typically avoid using civilians for their internal training programs. In recognition of this industry preference the committee relies on information sharing as a method for spreading awareness in the law enforcement community. Information shared includes the benefits of using the PESH Consultation services, and the compliance assistance and training information contained on the 2019 Law Enforcement CD. The committee has assembled quality information unique to the law enforcement community that can easily be incorporated in a police department's pre-shift daily briefing, in the form of short 'Safety Clips.' In 2019 we continued our efforts to enhance the material available. For example, the last update to the resource package was the addition of a Washington State Department of Labor and Industries hazard alert on potential carbon monoxide (CO) exposures from certain pursuit-rated SUVs with exhaust system defects. NYS PESH recently investigated the issue of CO intrusion into patrol vehicles during a FFY 2019 complaint at a NYS law enforcement agency.

Future Activities Planned:

This committee will continue their efforts by assisting New York's law enforcement community in a number of different ways. Information sharing is a critical component of the committee and a recognized strategy in reducing workplace injuries and illnesses. Our group is looking forward to continuing working with ESSA, which provides an opportunity to address trends or new issues with the group and disperse information in an exponentially effective way. Name recognition is a key to obtaining additional consultations and compliance assistance visits. The 2019 PESH Law Enforcement CD has proven successful with both name recognition and a means to disseminate information. ESSA should prove to be an ideal means of disseminating our resource material at the municipal level. Expanding upon this strategy, the committee will continue to look for partnerships with other State Agencies to develop an additional online resource to act as a clearing house for the information contained on the resource CD.

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Fire Service - NAICS 922160

Strategic Goal: Improve workplace safety and health for all public employees.

Performance Goal # 1B: Reduce Injury and Illness Rate by 5% over 5 years in NAICS 922160.

Baseline Year: 2012

Activity Measures:

Partnerships – This committee continues to build and maintain partnerships with the Fireman’s Association of the State of New York (FASNY), New York State Association of Fire Chiefs (NYS AFC), various members of the New York State Division of Homeland Security and Emergency Services (NYS DHSES), County Fire Coordinators and New York State Emergency Managers Association (NYSEMA)

Injury Data Collection and Analysis – The NYS DOL BLS Work Related Injuries and Illnesses data has historically been used to assemble statistics relating to fire departments covered by this committee. Both the Total Injury and Illness Rate and DART (Days Away, Restricted) have been used to track the overall progress of this committee. Strategic Plan members have started working with New York State BLS to learn about additional statistical data BLS collects and can share with PESH.

The OSHA OIS system was used to assemble Consultation, Inspection and Compliance Assistance data.

Primary Outcome Measures:

Fire Service Injury and DART Rates

Year	Baseline (2012)	2013	2014	2015	2016	2017	2018	% Reduction from Baseline Year
Injury and Illness Rate	21.8	24.0	79.1**	20.1	15.9	NA***	NA***	-27.1
DART Rate	20.0	23.0	77.5**	15.1	15.3	NA***	NA***	-23.5

* Based on BLS Data

** Outlier data anomaly not detected by BLS until after data was published

*** Data not available due to a BLS freeze on NAICS 92 data for data integrity reasons

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Intermediate Outcome Measures:

Fire Service FFY 2019 Activities

Measure Description	2012 Baseline	FFY 2019
Inspection Visits	183	159
Consultation Visits	25	40
Compliance Assistance Visits	55	18

**Information obtained from OIS*

Fire Service

Introduction:

The main goal of the Fire Strategic Planning is to reduce the number of injuries in state and local fire protection agencies by 1% per year or 5% for the next 5 years. The PESH Fire Strategic Plan focuses on injury and illness reduction in city and local fire departments throughout New York State.

Partnership Activity:

This committee continues to work with FASNY, NYS AFC and County Fire Coordinators as it relates to PESH activities. Members continue to network with county level Fire Coordinators and Emergency Managers through the New York State Emergency Management Association (NYSEMA) and the Local Emergency Planning Committee (LEPC) meetings.

Committee members attend the local New York State Emergency Management Association (NYSEMA) and the Local Emergency Planning Committee (LEPC) meetings. Emergency exercises also provide an effective mechanism for committee members to engage with the local and State fire and emergency response community.

Inspections:

There were 159 inspections in the fire service NAICS in FFY 2019, compared to 163 inspections in FFY 2018, and 183 inspections in the baseline year.

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Consultations:

There were a total of 40 consultations performed during FFY 2019, compared to 31 in FFY 2018; a 29% increase.

Compliance Assistance and Outreach:

There were a total of 18 compliance assistance activities conducted during FFY 2019, compared to 55 that were performed during the 2012 baseline year. Although the number of formal outreach activities decreased, the Strat Plan has reached out to 975 volunteer fire departments. Letters were mailed to fire departments throughout New York State explaining who PESH is, what they do, consultation services and trainings available, the top 10 fire department violations, and the availability of additional resources. From December 2018 through September 2019, 975 letters have been mailed. The mailings have received a significant upswing in positive interactions with the fire service in the State.

Training / Conferences / Meetings:

Committee members can impact a larger audience when presenting at County Chiefs meetings or other fire community events. During FFY 2019, Strategic Plan committee members conducted presentations and / or staffed informational booths at:

New York State Association of Fire Chiefs (NYS AFC) Fire Expo, June 12 & 13, 2019
Fire District Association Conference, Niagara Falls, October 3 & 4, 2019
First Due Conference, Allegany County, September 14, 2019
Vital Signs Conference, Buffalo, October 25 to 27, 2019
Broome County Fire Chiefs Association, PESH standards presentation February 7, 2019
Steuben County Fire Chiefs Association, PESH standards presentation February 2, 2019
Tioga County Fire Chiefs Association, PESH standards presentation June 19, 2019
Fire Industry, Rescue, and EMS EXPO booth, Syracuse, July 4, 2019
Jefferson County Fire & Emergency Management, presentation February 25, 2019
Cortland County Fire Chiefs Association, PESH standards presentation December 12, 2019

Compliance Assistance:

During FFY 2019, Strategic Plan consultation and compliance assistance visits increased from the previous year. Village departments and individual departments in fire districts and fire protection districts have been seeking help to achieve compliance with the PESH standards. Many smaller departments appear to be facing challenges with declining membership, which can increase the difficulties a fire departments experiences in ensuring that their individual members meet the training requirements. Additionally, departments that have had recent turnover in leadership positions, struggle to find new and innovative ways of providing members training. Strategic Plan members have been able to help a number of local departments by networking with county and state level resources.

Future Activities Planned:

The Fire Strat Plan Committee will continue to look for emerging trends within the local fire service community using NYS BLS data, NYSEMA meetings and PESH activities

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(consultations, inspections and outreach). Newly appointed PESH leadership are working with New York State BLS to learn about trending data that can be made available to the committee. Committee members will continue to target opportunities to present to county chief associations and other fire service groups to help promote our services and resources.

Residential Nursing Care (NAICS 623110) and Acute Hospital Care (NAICS 622110)

Strategic Goal: Improve workplace safety and health for all public employees.

Performance Goal #1C: Reduce the number of Lost Workdays by 5% in NAICS 623110 and 622110.

Baseline Year: 2012

Activity Measures:

Partnerships –This Strategic Plan committee continued building and maintaining partnerships with organized labor (PEF and CSEA), advocacy groups (NYS Zero Lift Task Force, NYCOSH, WNYCOSH) and various healthcare facilities. Safe patient handling assistance programs and other forms of assistance are being provided to public sector long-term care and acute healthcare facilities.

Injury Data Collection and Analysis - The Log of Work-Related Injuries and Illnesses (SH900) and the Summary of Work Related Injuries and Illnesses (SH-900.1) were used to assemble statistics relating to nursing home and acute hospital facilities covered by this committee.

The OSHA OIS system was used to assemble Consultation, Inspection and Compliance Assistance data

The Primary Outcome Measure of decreasing the Total Recordable Injury Rate in the targeted health care agencies by 1% per year has been exceeded, as shown in the table below.

Inspections –During FFY 2019 there were twenty-three (23) inspections conducted in Nursing and Acute Hospital Care facilities compared to twenty-four (24) in FFY 2018.

Consultations – There were no Nursing Home or Acute Hospital Care consultations performed during this period.

Compliance Assistance Activities – There were thirty-four (34) Compliance Assistance Visits conducted in Nursing and Hospital Care settings in FFY 2019 compared to twenty-six (26) in FFY 2018. For the past two years an emphasis was placed on documenting members outreach efforts within the OIS system

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Training Seminars – Strategic plan committee members and the Department of Labor – Division of Safety and Health, were involved in co-sponsoring two Safe Patient Handling Conferences. The 10th Annual Safe Patient Handling Conference which was held on October 30 & 31, 2018 at the Liverpool Holiday Inn and Conference Center. The 11th Annual Safe Patient Handling Conference which was held on March 25, 2019 at Hofstra University. Committee members spent a significant amount of time preparing, planning, and coordinating for this conference. Numerous public employers and several hundred public employees attend the conference, through which professional CEU’s can be obtained.

Primary Outcome Measures:

Number of Lost Workdays Due to Patient/Resident Handling

Nursing and Residential Care Facilities							
Measure	2012 Baseline	2013	2014	2015	2016	2017	2018
# Lost Work Days due to Resident Handling	13,375	9,749	10,530	9,842	7,127	6,863	9,455
Change relative to Baseline	NA	27% Decrease	21% Decrease	26% Decrease	47% Decrease	49% Decrease	29% Decrease
General and Surgical Hospitals							
Measure	2012 Baseline	2013	2014	2015	2016	2017	2018
# Lost Work Days due to Resident Handling	12,868	11,583	10,139	9,603	9,079	10,505	8,071
Change relative to Baseline	NA	10% Decrease	21% Decrease	25% Decrease	29% Decrease	18% Decrease	37% Decrease

*Data based on PESH collection of data using the census method

Days Away - Lost Work Day Rate – All Injuries and Illnesses

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Nursing and Residential Care Facilities							
Measure	2012 Baseline	2013	2014	2015	2016	2017	2018
Lost Work Day Rate	9.0	8.6	8.2	8.3	6.1	5.9	7.3
Change relative to Baseline	NA	4% Decrease	8.9% Decrease	7.8% Decrease	32.2% Decrease	34.0% Decrease	19% Decrease
General and Surgical Hospitals							
Measure	2012 Baseline	2013	2014	2015	2016	2017	2018
Lost Work Day Rate	4.0	2.9	3.5	3.4	3.0	4.2	5.3
Change relative to Baseline	NA	28% Decrease	12.5% Decrease	15% Decrease	25% Decrease	5.0% Increase	32.5% Increase

** Lost Work Day Rate - # cases resulting in lost time X 200,000 / total # work hours (Based on SH900.1)*

***Data based on PESH collection of data using the census method*

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Intermediate Outcome Measures: Nursing Care Facilities and Hospitals

Healthcare FFY 2019 Activities

Measure Description	2012 Baseline	FFY 2019
Inspection Visits	6	23
Consultation Visits	0	0
Compliance Assistance Visits	4	34

** Based on OIS Data*

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Introduction:

FFY 2019 is the fourth year of New York State Department of Labor's, FY 2016 – 2020 Five-Year Strategic Plan. This plan features some modifications to the previous plan's outcome and performance goals. The main goal of the Healthcare Strategic Plan committee is to reduce the Lost Work Day rate by 1% per year or 5% over the next 5 years. The PESH Healthcare Strategic Plan focuses on injury and illness reduction in County Nursing homes, State veterans' homes and public Acute Hospital Care facilities.

Partnership Activity:

Strategic Plan committee members continued their partnership with the NYS Zero Lift Task Force, WNYCOSH and NYS DOH. During FFY 2019, committee members spent significant time planning and coordinating for the 10th Annual Safe Patient Handling Conference on October 30 & 31, 2018; and for the 11th Annual Safe Patient Handling Conference on March 29, 2019. Each year committee members along with other field and support staff assist with all phases of the conference planning by working with attendee registrations, vendors, conference facility planners and arranging for attendee certifications, continuing education units (CEU's), and staffing of the PESH conference booth.

Inspections:

During FFY 2019, there were twenty-three (23) enforcement inspections in nursing homes and Acute Hospital Care facilities, compared to the FFY 2012 baseline year when 6 inspections were completed. This represents a 280% increase in the number of inspections. Of the twenty-three (23) inspections performed in FFY 2019, thirteen (13) were completed at acute health care facilities and ten (10) were completed at nursing home facilities.

Consultations:

There were no consultations performed during this period which is consistent with the FFY 2012 baseline year.

Compliance Assistance:

During FFY 2019 there were thirty-four (34) compliance assistance visits conducted compared to the 2012 Baseline in which there were four (4) visits or an increase by 850%. This change is a reflection of member's effort to utilize OIS to help illustrate the committee's efforts. During 2019, the Strategic Plan committee customized years of compiled Injury and Illness data on spreadsheets, with the intent to share multiple years of accumulated data with the facilities. The facilities can compare their rates with their New York peers anonymously; including rate comparisons for specific causes of injuries. The facilities can see how they fare against other public health care facilities on injuries due to safe patient handling, slips, falls, workplace violence, etc. This spreadsheet helped spur an increase of outreach activities partly due to an establishment's ability to quickly compare their rates with similar facilities.

Injury Data Collection & Analysis:

Each year the committee spends considerable time compiling injury and illness trends within long term care and acute health care facilities. From the lost work day data obtained, the

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committee now has five years of lost work day data which has been used to categorize common injury types. Charts were created to help provide a comparison of the injury and illness data based on common injury types and the lost work days associated within each category. This data allows for an easy comparison of injury trends at specific facilities within these industries and also provides a more focused comparison between New York public health care and long-term care facilities.

Data collection indicated that changes in injuries due to resident handling in long-term care facilities continues to be a significant issue. In acute care facilities, the Strat Plan noted a trend of increased injuries reported due to workplace violence. Outreach materials have been adjusted to address this trend. Below in this report are examples of the different charts used to illustrate the trends from lost workdays for specific injury types.

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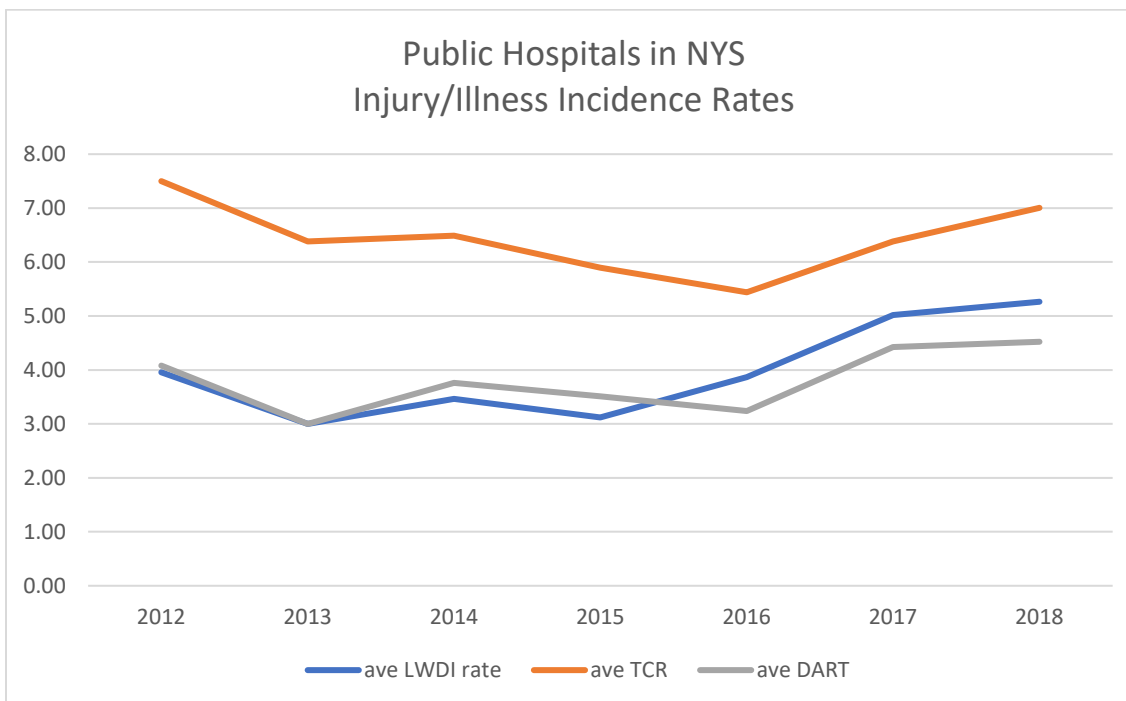
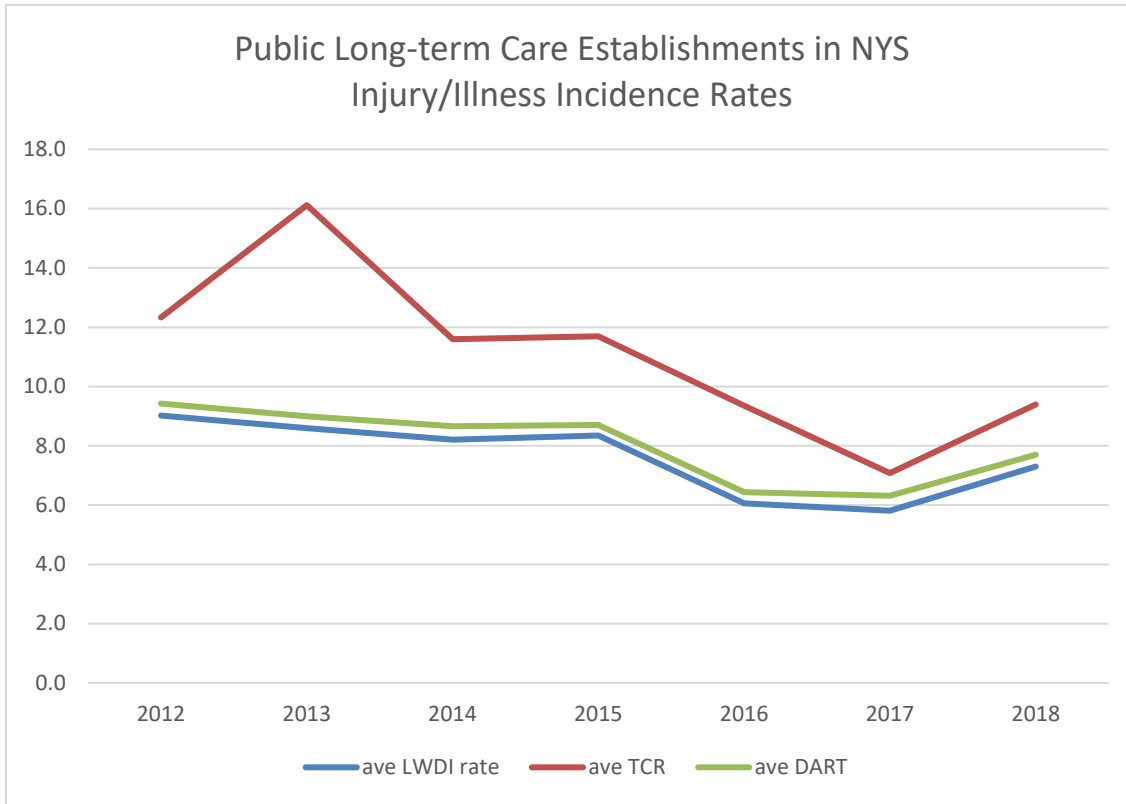
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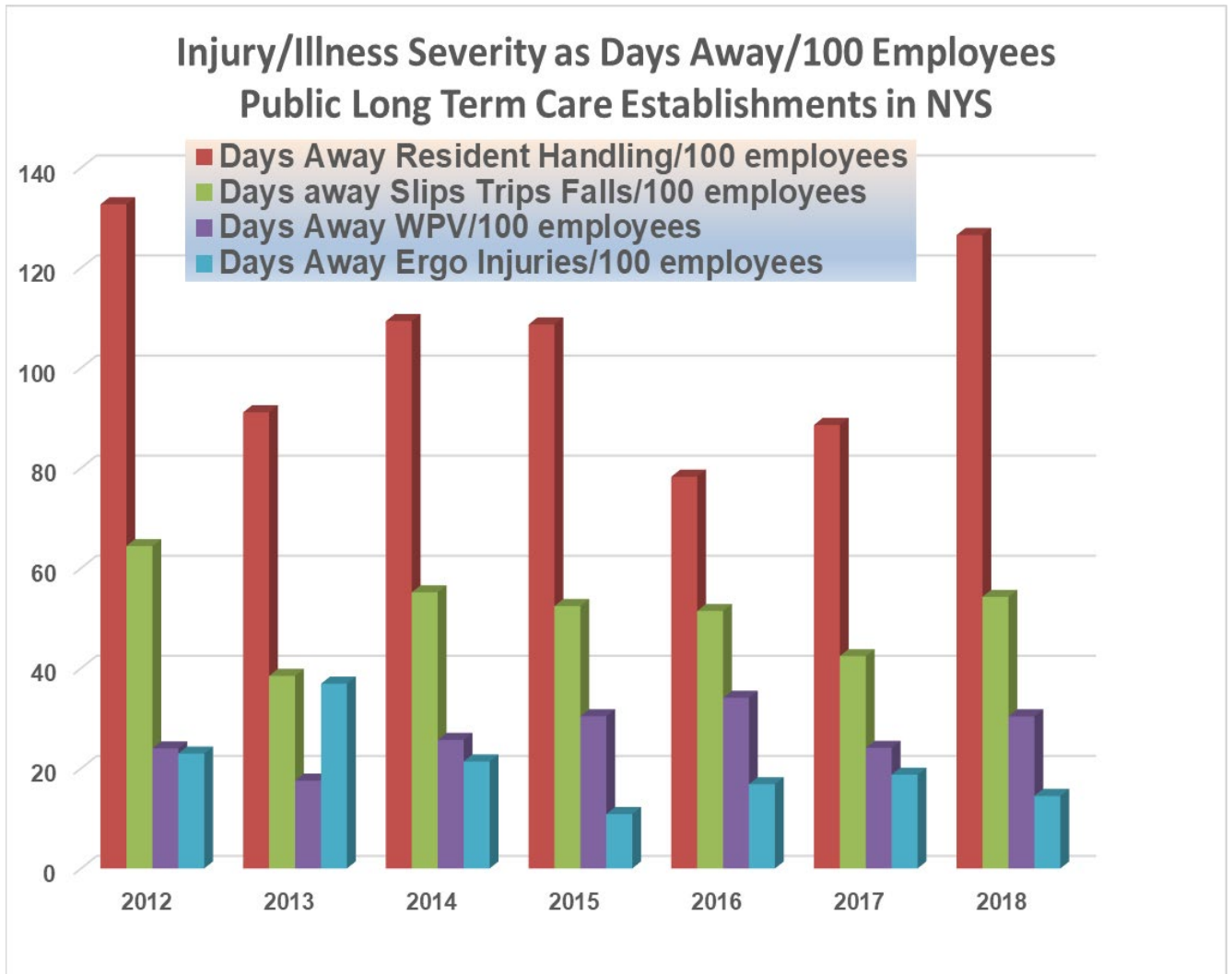
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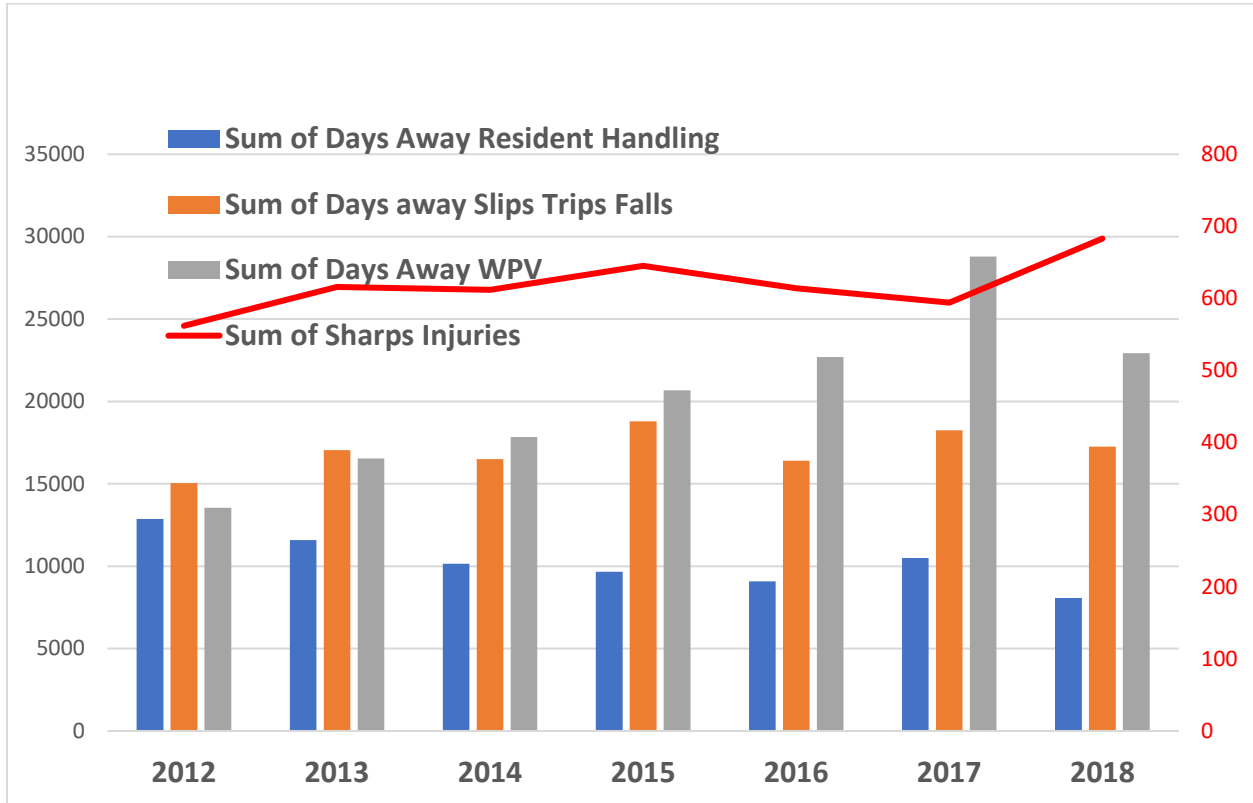
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Sum of Days Away for Various Injuries for NYS Public Hospitals



Miscellaneous Activities or Comments:

Each quarter committee members participate in conference calls, where members discuss current news pertaining to the industry, and develop strategies to address newly identified trends and issues. Committee members continue to participate in Zero Lift Task Force conference calls and work on upcoming Safe Patient Lifting Conferences.

Training:

Committee members typically do not conduct specific training to provide a facilities training requirement. Training success has been tied in with the Safe Patient Lifting Conferences, where each year industry experts are invited to participate by presenting on their areas of expertise. An informal training approach is used when committee members interact with facility staff and discuss injury and illness prevention strategies.

Future Activities Planned:

The process of soliciting, compiling and trending each year's Injury and Illness data consumes significant Strategic Plan resources. However, the awareness provided by the data is crucial for the committee's ability to develop new strategies for changing trends. Committee efforts will

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continue with the planning of upcoming Safe Patient Handling Conferences, their involvement in the NYS Zero Lift Task Force and the NYS Safe Patient Handling Work Group. The committee has compiled five years of injury data, categorized by common injuries for each facility. Efforts will continue to share the injury and illness data they have compiled with the long-term care facilities and acute public hospitals.