§ 27-a. Safety and health standards for public employees. 1. Definitions. As used in this section:

* a. "Employer" means the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality thereof.

* NB Effective until enactment of legislation by the state of New Jersey

* a. "Employer" means the state, any political subdivision of the state, a public authority, a bi-state authority utilizing its own police officers or firefighters or any other governmental agency or instrumentality thereof.

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b. "Employees" means persons permitted to work by an employer.

c. "Authorized employee representative" means an employee authorized by the employees or the designated representative of an employee organization recognized or certified to represent the employees pursuant to article fourteen of the civil service law.

* d. "Public employee" means any employee of the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality.

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e. "System components" means life safety harness, belts, ascending devices, carabiners, descent control devices, rope grab devices and snap-links.

2. Application. A safety or health standard promulgated under the

provisions of this section shall apply to every public employee and the commissioner shall have exclusive authority to enforce such standard in accordance with the provisions of this chapter, notwithstanding any other safety or health standard or any other provision in this chapter or in any other general, local or special law or charter. However, this section shall not supersede any inconsistent provision of the education law, as applied to any school building certified by the commissioner of education as being in compliance with such law, and the regulations promulgated pursuant thereto, on the effective date of this section, or as applied to any application for certification which is pending before the effective date of this section.

3. Duties. a. Every employer shall: (1) furnish to each of its employees, employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees and which will provide reasonable and adequate protection to the lives, safety or health of its employees; and (2) comply with the safety and health standards promulgated under this section. In applying this paragraph, fundamental distinctions between private and public employment shall be recognized.

b. Every employee shall comply with the safety and health standards and all rules, regulations and orders issued pursuant to this section which are applicable to his own actions and conduct.

c. The state shall promulgate a plan for the development and enforcement of occupational safety and health standards with respect to public employers and employees, in accordance with section eighteen (b) of the United States Occupational Safety and Health Act of 1970 (Public Law 91-596) which provides: "(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement."

4. Safety and health standards. a. The commissioner shall by rule

adopt all safety and health standards promulgated under the United States Occupational Safety and Health Act of 1970 (Public Law, 91-596) which are in effect on the effective date of this section, in order to provide reasonable and adequate protection to the lives, safety and health of public employees and shall promulgate and repeal such rules and regulations as may be necessary to conform to the standards established pursuant to such act or pursuant to paragraph b of this subdivision.

b. Notwithstanding the provisions of paragraph a of this subdivision, the commissioner, in consultation with the state occupational safety and health hazard abatement board, shall promulgate rules and regulations recommended to him by such board which establish standards whenever such board finds (i) that no federal standard exists for the particular condition being addressed and that such a standard is necessary for the protection of the public employees at risk, or (ii) a federal standard exists, but conditions in public workplaces in this state require a different standard, and such state standard will be at least as effective in providing safe and healthful places of employment as the federal standard.

c. Except for an employer located in a city with a population of over one million, any employer who employs a firefighter determined to be at risk of entrapment at elevations pursuant to regulations promulgated by the commissioner, shall provide emergency escape systems for use by such firefighter. The commissioner shall by rule identify the codes, standards and recommended practices of the National Fire Protection Association and other appropriate standards approved by the commissioner as are appropriate to the nature of the risk to which the firefighter shall be exposed and shall, at a minimum, include in such rule language requiring employers to (1) identify whether firefighters employed by them would be exposed to the hazard of entrapment at elevated surfaces; (2) identify those firefighters who would be exposed to the hazard; and (3) determine the appropriate emergency escape systems to address the hazard. Such emergency escape systems shall be adequate to protect the health and safety of the firefighter. The employer shall ensure that the firefighter is instructed in the proper use of the emergency escape

systems. As used in this subdivision, the term "entrapment at elevations" shall mean a situation where a fire or other emergency conditions require a firefighter inside a structure to immediately exit the structure but where such conditions make the normal route of exit unusable, thereby requiring the firefighter to exit the structure from an opening that is not designed as an exit and is above the ground floor or at an elevation above the surrounding terrain that would reasonably be expected to cause injury to a firefighter exiting by means of this opening without any emergency escape systems. As used in this subdivision, the term "emergency escape system" shall mean safety ropes and system components and any other system that (1) is compliant with the codes, standards and recommended practices of the National Fire Protection Association or other appropriate standard identified by the commissioner through regulation, as a means of emergency self-rescue from an above grade, immediately hazardous environment, (2) has been certified by a nationally recognized safety testing and certification organization, and (3) the commissioner has recognized through regulation.

In order to ensure the adequacy of the emergency escape systems, the employer must routinely inspect and ensure that:

(1) Existing emergency escape systems meet the codes, standards and recommended practices adopted by the commissioner.

(2) Existing emergency escape systems still perform their function and to identify any of their limitations such as but not limited to:

(i) Checking the labels or stamps on the equipment; and

(ii) Checking any documentation or equipment specifications; and

(iii) Contacting the supplier or the approval agency;

(3) Firefighters are informed of the limitations of emergency escape systems;

(4) Firefighters are not allowed or required to use any emergency escape systems beyond their limitations;

(5) Existing and new emergency escape systems have no visible defects that limit their safe use;

(6) Emergency escape systems are used, cleaned, maintained and stored according to manufacturer's instructions;

(7) The firefighter is instructed in identifying to the employer any

defects that the firefighter may find in emergency escape systems; and

(8) Any identified defects are corrected or immediate action is taken by the employer to eliminate the use of this equipment.

d. Any person who may be adversely affected by a standard issued under this section may, within thirty days after the effective date of such standard, commence a proceeding for judicial review pursuant to article seventy-eight of the civil practice law and rules.

5. Inspections. a. Any employee or representative of employees who believes that a violation of a safety or health standard exists, or that an imminent danger exists, may request an inspection by giving notice to the commissioner of such violation or danger. Such notice and request shall be in writing, shall set forth with reasonable particularity the grounds for the notice, shall be signed by such employee or representative of employees, and a copy shall be provided by the commissioner to the employer or the person in charge no later than the time of inspection, except that on the request of the person giving such notice, his name and the names of individual employees or representatives of employees shall be withheld. Such inspections shall be made forthwith.

b. A representative of the employer and an authorized employee representative shall be given the opportunity to accompany the commissioner during an inspection for the purpose of aiding such inspection. Where there is no authorized employee representative, the commissioner shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

c. The authority of the commissioner to inspect a premises pursuant to such an employee complaint shall not be limited to the alleged violation contained in such complaint. The commissioner may inspect any other area of the premises in which he has reason to believe that a violation of this section exists.

d. No employee who accompanies the commissioner on an inspection shall suffer any reduction in wages.

e. The commissioner may, upon his own initiative, conduct an inspection of any premises occupied by a public employer if he has reason to believe that a violation of this section has occurred or if he has a general administrative plan for the enforcement of this section, including general schedule inspections, which provide a rational administrative basis for such inspecting. Within ninety days of enactment of this paragraph the commissioner shall publish the general administrative plan and shall adopt regulations on the conduct of inspections in locker rooms and other areas involving the personal property and privacy rights of public employees.

f. Any information obtained by the commissioner under this section shall be obtained with a minimum burden upon the employers.

5-a. Notwithstanding any other provisions of law, when a request for an inspection has been made in a situation where there is an allegation of an imminent danger such that an employee would be subjecting himself or herself to serious injury or death because of the hazardous condition in the workplace, the inspection shall be given the highest priority by the department and shall be carried out immediately.

6. Enforcement procedures. a. If the commissioner determines that an employer has violated a provision of this section, or a safety or health standard or regulation promulgated under this section, he or she shall with reasonable promptness issue to the employer an order to comply which shall describe particularly the nature of the violation including a reference to the provision of this section, standard, regulation or order alleged to have been violated, shall fix a reasonable time for compliance and may establish the penalty to be assessed for failure to correct the violation by the time fixed for compliance. An employer who fails to correct a non-serious violation by the time fixed for compliance may be assessed a civil penalty of up to fifty dollars per day until the violation is corrected. An employer who fails to correct a serious violation by the time fixed for compliance may be assessed a civil penalty of up to two hundred dollars per day until the violation is corrected. Pursuant to section 18(k) of the United States

Occupational Safety and Health Act of 1970 (Public Law, 91-596), a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. A non-serious violation shall be defined as any violation that does not fall under the definition of serious violation. The commissioner shall not assess a penalty against an employer for failure to correct a violation of a standard which is the subject of an application for a temporary order granting a variance or a violation which is the subject of a petition to modify an order to comply, provided however, that upon issuance by the commissioner of a determination denying such variance or petition to modify, or upon expiration of a temporary variance or modified compliance period, the time fixed for compliance shall recommence and the employer become liable for the penalties provided herein.

b. Where the commissioner issues to an employer an order to comply, the employer shall post such order or a copy thereof in a conspicuous place at or near each place of violation cited in the order, where it is clearly visible to affected employees. The commissioner shall make such order available to employee representatives.

c. Any employer, or other party affected by a determination of the industrial commissioner issued pursuant to this section may petition the industrial board of appeals for review of such determination in accordance with section one hundred one of this chapter. Judicial review of the decision of the industrial board of appeals may be obtained by any party affected by such decision by commencing a proceeding pursuant to article seventy-eight of the civil practice law and rules within sixty days after such decision is issued.

d. If the time for compliance with an order of the commissioner issued pursuant to this section has elapsed, and the employer has not complied with the provisions of the order, the commissioner shall seek judicial

enforcement of such order by commencing a proceeding pursuant to article seventy-eight of the civil practice law and rules. Where an employer has complied with an order in all respects other than the payment of a penalty imposed pursuant to this subdivision, the commissioner may file with the county clerk of the county where the employer has its place of business the order of the commissioner continuing the amount of civil penalty found to be due. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

6-a. Form of complaints. The department shall establish a dedicated webpage through which any public employee under the jurisdiction of this section may report alleged or believed violations of any state law, regulation, rule or guidance related to occupational health and safety involving a communicable disease, including but not limited to the novel coronavirus COVID-19. Such webpage shall allow individuals to report alleged or believed violations anonymously.

7. Injunction proceedings. a. The supreme court of the state shall have jurisdiction, upon petition of the industrial commissioner, pursuant to the civil practice law and rules to restrain any conditions or practices in any place of public employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the abatement procedures otherwise provided for by this section. Such proceeding shall be brought in the county in which the violation is alleged to exist. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and

orderly manner. The employer may contest such order pursuant to the civil practice law and rules.

b. Whenever and as soon as an inspector concludes that conditions or practices described in paragraph a of this subdivision exist in any place of public employment, he shall inform the affected employees and employers of the danger and that he is recommending to the industrial commissioner that relief be sought.

c. If the industrial commissioner fails to seek relief under this section within forty-eight hours of being notified of such condition, any employee who may be injured by reason of such failure, or the authorized employee representative of such employees, may seek injunctive relief as provided in paragraph a of this subdivision.

8. Variances. a. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of paragraph b of this subdivision and establishes that (1) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (2) he is taking all available steps to safeguard employees against the hazards covered by the standard, and (3) he has an effective program for coming into compliance with the standard as quickly as practicable. Any temporary order issued under this subdivision shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing, provided the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except

that such an order may be renewed not more than twice so long as the requirements of this subdivision are met and if an application for renewal is filed at least ninety days prior to the expiration date of the order. No interim renewal of an order may remain in effect longer than one hundred and eighty days.

b. An application for a temporary variance order shall contain: (1) a specification of the standard or portion thereof from which the employer or owner seeks a variance; (2) a representation by the employer, supported by representations from qualified persons who have firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor; (3) a statement of the steps he has taken and will take, with specific dates, to protect employees against the hazard covered by the standard; (4) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take, with dates specified, to come into compliance with the standard; and (5) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the commissioner for a hearing. The commissioner is also authorized to grant a variance from any standard or portion thereof whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by him designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

c. Any affected employer may apply to the commissioner for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The commissioner shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the

variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, any employee or employee representative, or by the commissioner on his own motion, in the manner prescribed for its issuance under this subdivision at any time after six months from its issuance.

d. Any person, who may be adversely affected by a rule or order issued under this subdivision may challenge the validity or applicability of such rule or order by commencing, within sixty days, a proceeding pursuant to article seventy-eight of the civil practice law and rules.

9. Recordkeeping. a. In accordance with the commissioner's regulations, each employer shall make, keep and preserve, and make available to the commissioner such records regarding his activities relating to this section as the commissioner deems necessary or appropriate for developing information regarding the causes and prevention of occupational accidents and illness. Such regulations may include provisions requiring employers to conduct periodic inspections. The commissioner shall also issue regulations requiring that employers, through posting of notices, training or other appropriate means, keep their employees informed of their protections.

b. The commissioner shall prescribe regulations requiring employers to maintain accurate records and to make public periodic reports of work-related deaths, and injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve lost time from work, medical treatment, loss of consciousness, restriction of work or motion or transfer to another job.

c. The commissioner shall issue regulations requiring employers to

maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which the regulation requires to be monitored or measured. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring and have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by any safety and health standard promulgated under this section, and shall inform any employee who is being exposed of the corrective action being taken and the time limit for correction.

10. Discrimination against employees. a. No person shall discharge, or otherwise discipline, or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this section or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or others of any right afforded by this section.

b. Any employee who believes that he has been discharged, disciplined, or otherwise discriminated against by any person in violation of this subdivision may, within thirty days after such violation occurs, file a complaint with the commissioner alleging such discrimination. Upon receipt of such complaint, the commissioner shall cause such investigation to be made as he deems appropriate, and shall, if requested withhold the name of the complainant from the employer. If upon such investigation, the commissioner determines that the provisions of this subdivision have been violated, he shall request the attorney general to bring an action in the supreme court against the person or persons alleged to have violated the provisions of this subdivision. In any such action the supreme court shall have jurisdiction, for cause shown, to restrain violations of this subdivision and order all appropriate relief, including rehiring or reinstatement of the employee to his former position with all back pay.

c. Within ninety days of this receipt of a complaint filed under this subdivision the commissioner shall notify the complainant and his representative by registered mail of his determination.

d. Nothing in this subdivision shall be deemed to diminish the rights of any employee under any law, rule or regulation or under any collective bargaining agreement.

11. Wherever notice is required to be given to an authorized employee representative under this section, notice shall be given to all organizations representing employees at the worksite in question. Notice should be given to the office of the employee representative as well as to the representative at the worksite. Representatives who wish this dual notice must inform the department of the person who is to be notified. Such notice shall be in writing unless the inspection is being conducted under subdivision five-a of this section.

12. The commissioner may initiate voluntary compliance programs, including, but not limited to, a public employee consultation program to provide on-site consultation to public employers desiring such services as an adjunct to the commissioner's inspections pursuant to this section. Whenever an on-site consultation is performed under this subdivision, a report shall be issued of any findings of noncompliance with the regulations promulgated under this section and the report shall be made public.

13. Regulations. The commissioner may promulgate such procedural regulations as he shall consider necessary and proper to effectuate the purposes and provisions of this section.

14. A commission to report on the operation and effect of this section is hereby established. a. Such commission shall examine the incidence of work related injuries, the incidence of injuries to the public, and the effect of this section upon insurance costs of public employers. Such commission shall be empowered to recommend additional or corrective legislation to advance the purposes of this section.

b. Such commission shall be composed of three members, one of whom shall be chosen by the speaker of the assembly, one of whom shall be chosen by the temporary president of the senate, and one of whom shall be chosen by the governor.

c. Members of the commission shall serve without compensation, except for expenses reasonably incurred in the discharge of their duties under this subdivision.

d. The commission shall issue an interim report to the legislature and the governor, which report shall be issued one year after the effective date of this section. A final report shall be issued two years after such effective date.

15. New York state occupational safety and health hazard abatement board; creation and procedure. a. The New York state occupational safety and health hazard abatement board is hereby created to have and exercise the powers, duties and prerogatives provided by the provisions of this subdivision.

b. The membership of the board shall consist of five persons appointed by the governor of whom one shall be upon the recommendation of the temporary president of the senate, one upon the recommendation of the speaker of the assembly, and one upon the recommendation of the state comptroller. Members shall serve at the pleasure of the governor, and the governor may replace any member in accordance with the provisions contained herein for the appointment of members.

The governor shall designate one of the members to serve as chairman. The board shall act by a majority vote of its members, and a quorum to conduct business shall consist of three members. Any determination of the board shall be evidenced by a certification thereof executed by all the members present and voting. Each member of the board shall be entitled to designate a representative to attend meetings of the board in his place, and to vote or otherwise act on his behalf in his absence. Such representative shall not be authorized to delegate any of his

duties or functions to any other person. Notice of such designation shall be furnished in writing to the board by the designating member. A representative shall serve at the pleasure of the designating member during the member's term of office.

c. No elected public officer or public employee shall be eligible for appointment as a member of the board.

d. The members of the board and their representatives shall serve without salary or per diem allowance but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties pursuant to this section, provided however that such members and representatives are not, at the time such expenses are incurred, public employees or public officers otherwise entitled to such reimbursement.

e. The board shall meet at least four times a year with at least one meeting in each calendar quarter. The chairman shall designate the days of meeting, and shall provide each member with at least three weeks written notice of the date of such meeting.

f. Staff services for the board shall be performed insofar as practicable, by personnel of the department of labor. Additional professional and technical services may be secured from other state departments or agencies, with the consent of the head of such department or agency.

16. New York state occupational safety and health hazard abatement board; powers and duties. (A) a. The board created pursuant to subdivision fifteen of this section shall have the power, and it shall be its duty to receive, review and act upon applications for funding of capital projects designed to abate occupational safety and health hazards which have been found by the commissioner to violate the provisions of this section or which have been identified in a report of the public employee consultation program. The board shall fund seventy-five percent of the cost of any capital abatement project necessary to comply with an order issued by the commissioner pursuant to

the provisions of this section or with a recommendation for hazard abatement issued by the public employee consultation program.

b. In determining the order in which applicants shall receive grants from the fund, and the amount of such funding, the board shall consider the following factors:

(1) the degree of possible physical harm which the hazard to be abated could inflict on the public employees and other citizens at risk;

(2) the imminent nature of the possible infliction of harm;

(3) the number of public employees and other citizens at risk;

(B) a. The board shall have the power, and it shall be its duty to receive, review, and act upon applications for funding for programs designed to provide occupational safety and health training and education for employees pursuant to the provisions of article twenty-nine of this chapter.

b. The board shall, by the promulgation of rules and regulations, establish procedures and criteria that are necessary and appropriate to carry out the provisions of article twenty-nine of this chapter, which shall include criteria for the evaluation and selection of applications for grants and the auditing of performance thereunder.

(C) a. The board may require as part of such applications made pursuant to the provisions of this subdivision such information as it deems necessary and shall act upon such applications within a reasonable time. The board shall furnish the state budget director, state industrial commissioner, state comptroller, temporary president of the senate and speaker of the assembly with a copy of each application within three days following receipt thereof by the board.

b. That a employer has applied for funds pursuant to the provisions of this subdivision shall not relieve that employer of the obligation to correct any violation of this section by variance or other means.

(D) a. The board, in the formulation of standards pursuant to paragraph b of subdivision four of this section, shall have the power to conduct public hearings, administer oaths and take sworn or unsworn testimony at such hearings. The board may, by subpoena issued by the chair, compel the attendance of witnesses and the production of all

books, records and other evidence relative to any matter under inquiry in the formulation of such standards.

b. The board may contract with occupational health professionals and industrial safety engineers to provide expert assistance in the formulation of standards pursuant to paragraph b of subdivision four of this section.

c. The board is authorized, after public hearings, to recommend standards to the commissioner. The board, in addition to acting on its own initiative, shall review, consider and make recommendations regarding requests for new standards presented to such board by public employers, employees or authorized employee representatives.