§ 789. Injury reduction program. 1. Every employer subject to this section shall establish and implement an injury reduction program designed to identify and minimize the risks of work-related musculoskeletal disorders among workers involved in performing manual materials handling tasks. The program shall include: worksite evaluation; control of exposures, including ergonomic risk factors such as pace, which have caused or have the potential to cause work-related musculoskeletal disorders; employee training; on-site medical and first aid practices; and employee involvement.

2. The employer shall ensure that each job, process, shift or operation of work activity covered by this section or a representative number of such jobs, processes, shifts or operations of identical work activities shall be addressed by its injury reduction program. Unless otherwise exempted under this act, the employer shall have a written work site evaluation by a competent person for risk factors which have or are likely to cause work-related musculoskeletal disorders. Such risk factors shall include, but are not limited to, rapid pace, forceful exertions, extreme or static postures, repetitive motions, direct pressure, contact stress, vibration, or cold temperatures that had caused or are likely to cause work-related musculoskeletal disorders.

(a) Any worksite evaluations shall also determine whether any employees exposed to such risk factors are subject to either personnel action with the potential for adverse action, or adverse action or termination themselves, arising in whole or in part from an employer's use of quotas to determine employee assignments.

(b) All such worksite evaluations shall incorporate input from workers who regularly perform those jobs, either directly or through an employee-led workplace safety committee, on the possible risk factors and any workplace changes that can reduce such risk factors.

(c) Copies of such worksite evaluations shall be made available to workers and their representatives upon request, at no cost, within one business day of such request. Workers and their representatives shall be notified in writing of the results of the worksite evaluation. Employers shall maintain accessible copies of such evaluations at locations within the warehouse and shall make such copies readily available to workers.

(d) An initial worksite evaluation shall be conducted. Worksite

evaluations shall be reviewed and updated at least annually. A new analysis of risk factors shall be conducted in accordance with the provisions of subdivision one of this section whenever a new job, process, or operation is introduced which could increase the risk factors for work-related musculoskeletal disorders. Such new analysis shall be conducted within thirty days of the creation or change of a job, process or operation.

(e) A worksite evaluation must be reviewed by a board certified ergonomist when an employee-led workplace safety committee makes a written request to the employer based upon a material concern related to the findings of a competent person. Where there is no active employee-led workplace safety committee, a worksite evaluation must be reviewed by a board certified ergonomist when any employee-led committee makes a formal recommendation based upon a material concern related to the findings of a competent person.

3. The employer shall correct in a timely manner any risk factors identified as having caused or being likely to cause work-related musculoskeletal disorders. For any corrections which require more than thirty days to complete, the employer shall revise, as needed, and provide a schedule for such proposed corrections. Such schedule shall be included in the evaluations provided to workers and their representatives.

(a) Where the employer demonstrates that it is unable to eliminate identified risk factors, the employer shall minimize the exposures to the extent feasible.

(b) In reducing risk factors, the employer shall consider:

(i) engineering controls and redesigning work stations to change shelving heights, provide adjustable fixtures or tool redesign; and

(ii) administrative controls, such as job rotation which reduces the exposure to risk factors, reduced work pacing or additional work breaks.

(c) Employers shall maintain records of steps taken to eliminate or reduce risk factors and shall make copies available to workers and their representatives upon request.

4. All employers covered by this section shall provide injury reduction training to all employees involved in performing manual

materials handling jobs and tasks at the warehouse during normal work hours and without suffering a loss of pay. Such training shall be provided in a language and vocabulary that the workers understand and shall be repeated annually. The training shall also be provided to the workers' supervisors. Such training shall be in addition to any training received in accordance with section twenty-seven-d of this chapter and shall include:

(a) The early symptoms of work-related musculoskeletal disorders and the importance of early detection;

(b) Musculoskeletal disorder ergonomic risk factors and exposures at work, including the hazards posed by excessive rates of work;

(c) Methods to reduce risk factors for musculoskeletal disorders, including both engineering controls and administrative controls, such as limitations on work pace and increased scheduled and unscheduled breaks;

(d) The employer's program to identify risk factors as required under this section and prevent work-related musculoskeletal disorders, including the summary protocols for medical treatment approved by the employer's medical consultant;

(e) The rights and function of workplace safety committees established under section twenty-seven-d of this chapter and the rights of employees to report any risk factors, other hazards, injuries or health and safety concerns; and

(f) Training on the unlawful retaliation of any provision in this section, including a reference to the employer's policy requiring disciplinary actions when supervisors or managers violate the law or policy, as well as the employer's policy prohibiting any workplace discrimination.

5. Any on-site location that staffs a medical professional to treat workers in warehouses covered by this section for symptoms of work-related musculoskeletal disorders shall be staffed with medical professionals operating within their legal scope of practice. Nothing in this section shall infringe on the rights of workers under the opening paragraph of subdivision (a) of section thirteen of the workers' compensation law to either select an authorized physician to treat employees and render medical care or to select the continuance of any medical treatment or care by an authorized physician selected by the

employee. All examinations and treatments by any medical personnel employed or selected by the employer under section seven hundred eighty-one of this article shall be performed for the purposes of the injury reduction program and shall not interfere with the rights of employees to receive any medical treatment or any other benefits under the workers' compensation law.

(a) Employers shall ensure that staffing and the practice of any first aid or medical station meets state requirements for physician supervision of nurses, emergency medical technicians or other non-physician personnel.

(b) In all warehouses with on-site medical or first aid providers for the treatment of work-related musculoskeletal disorders, the employer shall consult with a medical consultant who is licensed by New York state and board certified in occupational medicine.

(i) The employer shall obtain from the medical consultant a written evaluation of the on-site medical or first aid provider program and protocols followed in the warehouse for identification and treatment of work-related musculoskeletal disorders and shall include recommendations to ensure compliance with accepted medical practice of the staffing, supervision and documentation of medical treatment protocols.

(ii) The employer shall obtain from the medical consultant a summary of treatment protocols suitable for worker patients covering all aspects of the on-site medical and first aid practices, from early detection of work-related musculoskeletal disorders through evaluation by a qualified physician and physician provision of appropriate work restrictions in languages understood by the employees.

(iii) The employer shall ensure that the medical consultant reviews the previous medical consultant evaluation, related materials and protocols on an annual basis, and recommends changes as appropriate.

(iv) The employer shall ensure that all designated medical and first aid providers have observed, in person, the jobs involving manual materials handling within the warehouse and all risk factors identified in the evaluation conducted under the medical consultant evaluation.

(c) There shall be no delays in the provision of adequate medical care to workers who report injuries to the on-site medical services.

(d) Each employer shall ensure that no supervisory or managerial employee or other person discriminates or retaliates against any

current, former, or prospective employee or other person for reporting a work-related injury or illness, or health and safety concern.

6. Employers shall ensure that employees and their designated representatives are consulted both before and during the development and implementation of all aspects of the program. Where employees have established a workplace safety committee in compliance with section twenty-seven-d of this chapter, the employer shall ensure that the committee is consulted regarding the development and implementation of all aspects of the injury reduction program. Any record created by the employer according to this section shall be provided to the workplace safety committee prior to consultation. All ergonomic safety documents provided to employees shall be provided in writing in English and in the language identified by each employee as the primary language of such employee. If, prior to the effective date of this section, an employer has formed workplace safety committees in the State of New York through collective bargaining that is currently active, and continuously maintains such safety committees in conjunction with an injury prevention program that fully complies with the federal Occupational Safety and Health Act, then such employer may instead allow an employee-led workplace safety committee to review or conduct any worksite evaluations performed by a competent person. Such injury prevention program must be reviewed by a board certified ergonomist where an employee-led workplace safety committee makes a written request to the employer based upon a material concern related to the findings of a competent person. Where there is no active employee-led workplace safety committee, a worksite evaluation must be reviewed by a board certified ergonomist when any employee-led committee makes a written request to the employer based upon a material concern related to the findings of a competent person. Such review must be commenced within thirty days of receipt of such written request. Copies of revised or new worksite evaluations shall be made available to workers and their representatives, at no cost, upon request upon completion of such worksite evaluation.