

OSHA[®] FactSheet

Variations from OSHA Standards

Generally, a variance is an alternative procedure of compliance with some part of a safety and health standard granted by OSHA to an employer. For example, sometimes employers may not be able to comply fully and on time with a new safety or health standard because of a shortage of personnel, materials, or equipment. Or employers may prefer to use methods, equipment, or facilities that they believe protect workers as well as or better than OSHA standards. See Title 29 of the Code of Federal Regulations (CFR), Part 1905, Rules of Practice standard for more information.

In situations like these, employers may apply to OSHA for a variance. There are four types of variances: *temporary*, *permanent*, *experimental* and *national defense*.

Temporary variance

A temporary variance allows employers a short-term (limited time) relief from a standard when they cannot comply with newly published OSHA requirements by the prescribed effective date because the necessary construction or alteration of the facility cannot be completed in time or when technical personnel, materials, or equipment are temporarily unavailable. To be eligible for a temporary variance, an employer must implement an effective compliance program as quickly as possible. In the meantime, the employer must demonstrate to OSHA that all available steps are being taken to safeguard workers. Inability to afford compliance costs is not a valid reason for requesting a temporary variance. For details on the information required in the application for a temporary variance, see 29 CFR Part 1905.10 Subpart B.

Interim order

An interim order permits an employer to continue operating under existing conditions while OSHA considers the employer's request for a variance – whether temporary, permanent, or both. If the interim order is granted, employers must inform workers by giving a copy of the order to authorized employee representatives and posting a copy prominently in the workplace.

Permanent variance

A permanent variance grants an alternative means of compliance with the requirements of a

standard to employers who can prove that their methods, conditions, practices, operations, or processes provide workplaces that are as safe and healthful as those that follow the OSHA standards. When applying for a permanent variance, employers must let workers know they have filed the application and that the workers have the right to request a hearing. To decide whether to grant a permanent variance, OSHA reviews the employer's evidence and, if appropriate, visits the workplace to confirm the facts provided in the application. If the request has merit, OSHA may grant a permanent variance. Final variance orders detail the employer's specific responsibilities and requirements and explain exactly how the employer's method varies from the OSHA requirement. For details on the information required in the application for a permanent variance, see 29 CFR Part 1905.11 Subpart B.

Experimental variance

Employers use experimental variances to demonstrate or validate new or improved safety and health techniques. They are developed in close cooperation with OSHA. For details on the information required in the application for an experimental variance, see section 6(b)(6)(C) of the *Occupational Safety and Health Act of 1970* (OSH Act).

National defense variance

OSHA uses national defense variances to grant "reasonable variations, tolerances and exemptions to and from" the requirements of the OSH Act "to avoid serious impairment of the national defense." If a defense variance is in effect for more than six months, employers must notify workers and offer a public hearing on the issues involved. For details on the information required

in the application for a national defense variance, see 29 CFR Part 1905.12 Subpart B.

How to apply for a variance

That will depend on whether the worksite involved is under federal or state/territorial jurisdiction.

Federal

Forward these variance applications to U.S. Department of Labor/OSHA, Office of Technical Programs and Coordination Activities, 200 Constitution Avenue, NW, N-3655, Washington, DC 20210. The following states and territories are under federal jurisdiction. States: AL, AR, CO, DC, DE, FL, GA, ID, IL, KS, LA, MA, ME, MO, MS, MT, ND, NE, NH, OK, OH, PA, RI, SD, TX, WI, WV. Territories: American Samoa, Guam, Trust Territory of the Pacific Islands, and Wake Island.

State/Territorial

Address these variance applications to the appropriate state or territorial OSHA office, which is usually located in the Department of Labor of a state or territory. The following states and territories operate under their own OSHA-approved job safety and health programs and cover state and local government employees as well as private sector employees. States: AK, AZ, CA, CT,* HI, IA, IN, KY, MD, MI, MN, NC, NJ,* NM, NV, NY,* OR, SC, TN, UT, VA, VT, WA, WY. Territories: PR, VI*. Addresses for these states are available on the OSHA website at www.osha.gov.

*Plans cover public employees only.

What if I have worksites in more than one state?

If you have operations in more than one state, you may apply for a multi-state variance. Even if one or more of the states involved has its own OSHA-approved state plan, you may consolidate your variance applications. If a state standard is identical to the federal standard, the state will have the opportunity to join with Federal OSHA in granting a variance. See 29 CFR 1952.9 for more information.

Additional information

For more information on variance applications, visit OSHA's website at www.osha.gov/dts/otpca/variances/apply.html. OSHA has various publications, standards, technical assistance, and compliance tools to help you, and offers extensive assistance through state plans, workplace consultations, and training and education. OSHA's Safety and Health Program Management Guidelines (54 *Federal Register* (16): 3904-3916, January 26, 1989) detail elements critical to the development of a successful safety and health management system. This and other information are available online.

Contacting OSHA

To report an emergency, file a complaint, or seek OSHA advice, assistance, or products, call (800) 321-OSHA (6742) or contact your nearest OSHA regional or area office.

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For more complete information:



U.S. Department of Labor

www.osha.gov

(800) 321-OSHA