

CHAPTER 8 CONSULTATIVE SERVICES

[Similar subject covered in Ch 6 prior to 12/24/80]
[Ch 8 appearing prior to 12/24/80 renumbered as Ch 9]
[Prior to 9/24/86, Labor, Bureau of[530]]
[Prior to 10/7/98, see 347—Ch 8]

875—8.1(88) Purpose and scope. This chapter contains procedures for the division of labor services, bureau of consultation and education, to provide consultation services to private and public employers. Employers seeking information regarding consultative services should visit <http://www.iowaworkforce.org/labor/iosh/consultation/index.htm> or telephone (515)281-7629.

8.1(1) Services are available at no cost to employers to assist employers in establishing effective occupational safety and health programs in order to provide employment and a place of employment that are safe and healthful. The goal is to prevent injuries and illnesses that may result from exposure to hazardous work practices and conditions. The principal assistance will be provided at the employer's work site, but off-site assistance may also be provided. Within the scope of the employer's request, the consultant will evaluate the employer's program for providing employment and a place of employment that are safe and healthful; identify specific hazards in the workplace; and provide appropriate advice and assistance in establishing or improving the employer's safety and health program and in correcting any hazardous conditions identified. Assistance may include education and training of the employer, the employer's supervisors, and the employer's other employees to make the employer self-sufficient in ensuring safe and healthful work and working conditions.

8.1(2) Consultation is independent of Iowa OSHA Enforcement, and the discovery of hazards shall not mandate citations or penalties. However, the employer has a statutory obligation to protect employees, and, in certain instances, the employer shall be required to take necessary protective action. An employer that corrects the hazards identified by the consultant during a comprehensive workplace survey, implements certain core elements of an effective safety and health program, and commits to complete other core elements of an effective safety and health program may qualify for exemption from certain enforcement activities.

[ARC 8591B, IAB 3/10/10, effective 4/14/10]

875—8.2(88) Definitions. Unless the context clearly requires otherwise, the definitions contained in Iowa Code section 88.3 shall be applicable wherever this chapter uses those terms. Unless the context clearly requires otherwise, the following additional definitions apply to this chapter.

“Act” means the Iowa occupational safety and health Act, Iowa Code chapter 88.

“Compliance officer” means a compliance safety and health officer employed by Iowa OSHA Enforcement.

“Consultant” means an employee of the bureau of consultation and education of the division of labor services.

“Consultation” means all activities related to the provision of consultative assistance under this chapter, including off-site consultation and on-site consultation.

“Division” means the division of labor services of the department of workforce development.

“Education” means planned and organized activity by a consultant to impart information to employers and employees to enable them to establish and maintain employment and a place of employment that are safe and healthful.

“Employee representative” means the authorized representative of employees at a site where there is a recognized labor organization representing employees.

“Hazard correction” means the elimination or control of a workplace hazard in accordance with the requirements of the Act and rules.

“Imminent danger” means a condition or practice in a place of employment that could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated through the procedures set forth in rule 875—8.6(88).

“*Iowa OSHA Enforcement*” means the unit of the division that enforces the occupational safety and health Act.

“*List of Hazards*” means a list of all serious hazards that are identified by the consultant and the correction due dates agreed upon by the employer and the consultant.

“*Off-site consultation*” means consultation provided away from an employer’s work site by means such as training, education, telephone, and correspondence.

“*On-site consultation*” means consultation provided during a visit to an employer’s work site. “On-site consultation” includes a written report to the employer on the findings and recommendations resulting from the visit, and may include training and education needed to address hazards or potential hazards at the work site.

“*Other-than-serious hazard*” means any condition or practice that would be classified as an other-than-serious violation of applicable standards based on criteria contained in the current Iowa Field Operations Manual.

“*Programmed inspection*” means an inspection scheduled based on objective or neutral criteria as set forth in the Iowa Field Operations Manual.

“*Recognition and exemption program*” means an achievement recognition program to recognize an employer that operates an exemplary program that results in the immediate and long-term prevention of job-related injuries and illnesses at a workplace.

“*Serious hazard*” means a condition or practice that would be classified as a serious violation of applicable standards based on criteria contained in the current Iowa Field Operations Manual, except that the element of employer knowledge shall not be considered.

“*Training*” means the planned and organized activity of a consultant to impart skills, techniques and methodologies to employers and their employees to assist them in establishing and maintaining employment and a place of employment that are safe and healthful.

[ARC 8591B, IAB 3/10/10, effective 4/14/10]

875—8.3(88) Requesting and scheduling of on-site consultation visit.

8.3(1) *Employer requests.* On-site consultation shall be provided only upon the request of the employer and shall not result from the enforcement of any right of entry under law. An employer in a small, high-hazard establishment is encouraged to include within the scope of the request all working conditions at the work site and the employer’s entire safety and health program. Any employer may specify a more limited scope for the visit by indicating working conditions, hazards, or situations on which on-site consultation will be focused. When limited requests are made, the consultant shall limit review and provide assistance only with respect to the specified working conditions, hazards, or situations. However, if in the course of the on-site visit the consultant observes hazards that are outside the scope of the request, the consultant shall treat the hazards as though they were within the scope of the request.

8.3(2) *Relationship to enforcement.* An employer may request on-site consultation to assist in the abatement of hazards cited during an enforcement inspection. However, on-site consultation may not take place after an enforcement inspection until the conditions set forth in 8.7(2) “c” have been met.

8.3(3) *Scheduling priority.* Scheduling priorities shall be in accordance with the federal Consultation Policy and Procedures Manual.

[ARC 8591B, IAB 3/10/10, effective 4/14/10]

875—8.4 and 8.5 Reserved.

875—8.6(88) Conducting a visit.

8.6(1) *Preparation.*

a. The consultant shall conduct an on-site consultation visit only after appropriate preparation. Prior to the visit, the consultant shall become familiar with as many factors concerning the establishment’s operation as possible. The consultant shall review all applicable codes and standards. In addition, the consultant shall ensure that all necessary technical and personal protective equipment is available and functioning properly.

b. If a request is made during a promotional visit and the conditions of 8.6(1)“a” are met, a consultant may perform on-site consultation activities immediately.

8.6(2) Structured format.

a. An initial on-site consultation visit shall consist of an opening conference where the employer shall be advised of the responsibilities under state law, an examination of those aspects of the employer’s safety and health program that relate to the scope of the visit, a walk-through of the workplace, and a closing conference. An initial visit may include training and education for employers and employees, if the employer requests the assistance and if the need for the training and education is revealed by the walk-through of the workplace and the examination of the employer’s safety and health program. The consultant shall provide a written report to the employer after the consultation.

b. Additional visits may be conducted as the employer requests to provide needed education and training, assistance with the employer’s safety and health program, or technical assistance in the correction of hazards. Additional visits may also be conducted if necessary to verify the correction of serious hazards identified during previous visits.

8.6(3) Employee participation.

a. The consultant retains the right to confer with individual employees privately during the course of the visit in order to identify and judge the nature and extent of particular hazards within the scope of the employer’s request, and to evaluate the employer’s safety and health program. The consultant shall explain the necessity for this contact to the employer during the opening conference, and the employer must agree to this contact before a visit can proceed.

b. Employees, their representatives, and members of a workplace joint safety and health committee may participate in the on-site consultation to the extent desired by the employer. In the opening conference, the consultant shall encourage the employer to allow employee participation to the fullest extent practicable.

c. An employee representative of affected employees must be afforded an opportunity to accompany the consultant and the employer’s representative during the physical inspection of the workplace. The consultant may permit additional employees such as representatives of a joint safety and health committee to participate in the walk-through of the work site if the consultant determines that additional employees will aid the visit.

d. If there is no employee representative, if the consultant is unable with reasonable certainty to identify an employee representative, or if the employee representative declines the offer to participate, the consultant must confer with a reasonable number of employees concerning matters of occupational safety and health.

e. The consultant is authorized to deny the right to participate to any person whose conduct interferes with the orderly conduct of the visit.

8.6(4) Opening and closing conferences.

a. In the opening conference, the consultant shall explain the relationship between on-site consultation and OSHA enforcement activity, shall explain the obligation to protect employees in the event that certain hazardous conditions are identified, and shall emphasize the employer’s obligation to post the List of Hazards.

b. The consultant will encourage a joint opening conference with the employer and employee representatives. If there is an objection to a joint conference, the consultant will conduct separate conferences with the employer and employee representatives. The consultant must inform employees at the opening conference of the purpose of the consultation visit.

c. At the conclusion of the consultation visit, the consultant will conduct a closing conference with the employer and employee representatives, jointly or separately. The consultant will describe hazards identified during the visit and other pertinent issues related to employee safety and health.

8.6(5) On-site activity.

a. During the on-site consultation, the consultant will focus primarily on conditions, hazards, or situations for which the employer requested assistance. An employer may expand or reduce the scope of the request at any time during the on-site consultation. If the employer requests an expansion of the scope, the consultant shall expand the scope immediately if scheduling priorities permit and the consultant is

prepared. If the employer's request for expansion necessitates further preparation by the consultant or the expertise of another consultant, or if other employer requests may merit higher priority, the consultant shall refer the request to the consultation manager for scheduling. If the scope of the visit is reduced, the employer shall correct serious hazards that were already identified and provide appropriate proof of correction.

b. The consultant shall advise the employer of the employer's obligations and responsibilities under applicable law.

c. Within the scope of the employer's request, the consultant shall review the employer's safety and health program and provide advice on modifications or additions to make the program more effective.

d. Consultants shall identify and provide advice on the correction of hazards included in the employer's request and any other safety or health hazards observed in the workplace during the course of the on-site consultation. This advice may include a general description of a solution. The consultant shall conduct necessary sampling, testing, and analysis to confirm the existence of a safety or health hazard.

e. Advice and technical assistance on the correction of identified safety and health hazards may be provided to employers during and after the on-site consultation. The consultant may provide materials on approaches, means, techniques, and items commonly utilized for the elimination or control of hazards. The consultant shall advise the employer of additional sources of assistance, if known.

f. When a hazard is identified in the workplace, the consultant shall indicate to the employer the consultant's best judgment as to whether the hazard would be classified as serious hazard or other-than-serious hazard.

g. If the consultant determines that an identified serious hazard exists, the consultant shall assist the employer to develop a specific plan to correct the hazard, affording the employer a reasonable period of time to complete the necessary action. The chief of the bureau of consultation and education shall provide an expeditious informal discussion regarding the period of time established for the correction of a hazard or any other substantive findings of the consultant if the employer requests the informal discussion within 15 working days from receipt of the consultant's report.

h. As a condition for receiving the consultation service, the employer must agree to post the List of Hazards accompanying the consultant's written report and to notify affected employees when hazards are corrected. The employer must, upon receipt, post the unedited List of Hazards in a prominent place where it is readily observable by all affected employees for 3 working days or until the hazards are corrected, whichever is later. A copy of the List of Hazards shall be made available to the employee representative who participated in the visit. In addition, the employer must agree to make available at the work site for review by affected employees or the employee representative information on the corrective actions proposed by the consultant and other-than-serious hazards identified. Iowa OSHA Enforcement will not schedule a compliance inspection in response to a complaint based upon a posted List of Hazards unless the employer fails to correct the hazards or fails to provide interim protection for exposed employees.

8.6(6) *Employer's obligations.*

a. An employer must take immediate action to eliminate employee exposure to a hazard that, in the judgment of the consultant, presents an imminent danger to employees. If the employer fails to take the necessary action, the chief of the bureau of consultation and education shall immediately notify the affected employees and the chief of Iowa OSHA Enforcement and provide relevant information.

b. An employer must also take the necessary action to eliminate or control employee exposure to any identified serious hazard and meet the employee notice requirements of 8.6(5) "h." In order to demonstrate that the necessary action is being taken, an employer may be required to submit periodic reports, permit a follow-up visit, or take similar action.

c. The chief of the bureau of consultation and education may grant an extension of time for the correction of a serious hazard when:

- (1) The employer files a request for extension;
- (2) The employer demonstrates it made a good-faith effort to correct the hazard within the established time frame;

(3) The employer provides evidence that correction is not complete because of factors beyond the employer's reasonable control; and

(4) The employer provides evidence that the employer is taking all available interim steps to safeguard the employees against the hazard during the correction period.

d. If the employer fails to take the action necessary to correct a serious hazard within the established time frame or any extensions thereof, the chief of the bureau of consultation and education shall immediately notify and provide relevant information to the chief of Iowa OSHA Enforcement. The chief of Iowa OSHA Enforcement shall review the facts and determine whether enforcement activity is warranted.

e. The employer shall confirm in writing to the chief of the bureau of consultation and education that the hazards have been corrected, unless the consultant observed correction of the hazards.

8.6(7) *Written report.* For each visit that results in substantive findings or recommendations, a written report shall be prepared and sent to the employer. The report shall include the following elements as applicable:

- a.* A restatement of the employer's request;
- b.* A description of the working conditions examined by the consultant;
- c.* An evaluation of the employer's safety and health program;
- d.* Recommendations for making the safety and health program more effective;
- e.* Identification, description, and classification of each hazard;
- f.* Reference to applicable standards and regulations;
- g.* Correction date for each serious hazard;
- h.* Suggested means or approaches to correct hazards; and
- i.* Recommendations for additional assistance such as medical or engineering advice.

8.6(8) *Confidentiality.* Pursuant to Iowa Code subsection 88.16(4), consultation records that relate to specific employers or specific workplaces shall be kept confidential. The bureau of consultation and education shall provide, when requested, program information to the U.S. Occupational Safety and Health Administration, including information that identifies employers that have requested consultation services. The U.S. Occupational Safety and Health Administration may use such information to administer the consultation program and to evaluate performance, but shall treat information that identifies specific employers as exempt from public disclosure to the extent allowed by law.

[ARC 8591B, IAB 3/10/10, effective 4/14/10]

875—8.7(88) Relationship to enforcement.

8.7(1) *Separation of functions.* Consultation shall be conducted independently of Iowa OSHA Enforcement and shall have separate management staff. Except as noted in subrule 8.7(3), neither the identity of an employer requesting on-site consultation nor the file or report from the consultation activity shall be provided to Iowa OSHA Enforcement unless the employer fails to take the necessary action to protect employees from a serious hazard or imminent danger.

8.7(2) *Effect upon scheduling.*

a. An on-site consultation already in progress shall have priority over compliance inspections by Iowa OSHA Enforcement except as provided in 8.7(2) "b." The consultant and the employer shall notify the compliance officer that an on-site consultation is in progress and shall request delay of the inspection until after the on-site consultation is completed. An on-site consultation shall be considered in progress in relation to the working conditions, hazards, or situations covered by the request from the beginning of the opening conference through the end of the correction due dates and any extensions thereof. In exercising its authority to schedule compliance inspection, Iowa OSHA Enforcement may assign a lower priority to work sites where consultation visits are scheduled.

b. The consultant shall terminate an on-site consultation if one of the following compliance inspections by Iowa OSHA Enforcement is about to take place:

- (1) Imminent danger investigation.
- (2) Fatality/catastrophe investigation.
- (3) Complaint investigation.

(4) Other critical inspection as determined by the commissioner.

c. An on-site consultation shall not take place while an enforcement inspection is in progress at the establishment. An enforcement inspection shall be deemed “in progress” from the time a compliance officer initially seeks entry to the workplace to the end of the closing conference. If the employer denied the compliance officer entry to the work site, an enforcement inspection is “in progress” until the inspection is concluded, the commissioner determines that a warrant to enter will not be sought, or the commissioner determines that allowing a consultative visit to proceed is in the best interest of employee safety and health. An on-site consultation shall not take place subsequent to an enforcement inspection until the employer has been notified that no citations will be issued, or if a citation is issued, on-site consultation shall take place only with regard to those citation items that have become final orders.

d. The recognition and exemption program operated by the bureau of consultation and education provides incentives and support to high-hazard employers to work with employees to develop, implement, and continuously improve the effectiveness of safety and health programs.

(1) Programmed enforcement inspections at a work site may be deferred while the employer is working to achieve recognition status if the following conditions are met:

1. An employer requested participation in a recognition and exemption program;
2. A consultant has conducted an on-site consultation covering all conditions and operations related to occupational safety and health;
3. An employer corrected all hazards identified during the consultation visit within established time frames;
4. An employer has begun to implement all of the elements of an effective safety and health program;

and

5. An employer agrees to request an on-site consultation if major changes in working conditions or work processes occur that may introduce new hazards.

(2) Employers that meet all the requirements for recognition and exemption will be removed from the Iowa OSHA Enforcement programmed inspection schedules for at least one year from the date of the certificate of recognition.

(3) Iowa OSHA Enforcement will continue to make the inspections listed below at sites that achieved recognition and exemption status and at sites that have received deferrals under 8.7(2)“d”(1):

1. Imminent danger;
2. Fatality/catastrophe; and
3. Formal complaint.

8.7(3) *Effect upon enforcement.*

a. The advice of the consultant and the consultant’s written report shall not be binding upon a compliance officer in a subsequent enforcement inspection. In a subsequent enforcement inspection, a compliance officer is not precluded from issuing citations and proposing penalties for hazardous conditions or violations.

b. The hazard identification and correction assistance given by the consultant, the failure of the consultant to point out a specific hazard, and errors or omissions by the consultant shall not:

- (1) Be binding upon a compliance officer;
- (2) Affect the regular conduct of a compliance inspection;
- (3) Preclude the finding of alleged violations and the issuance of citations; or
- (4) Act as a defense to any enforcement action.

c. In the event of a subsequent enforcement inspection, the employer is not required to inform the compliance officer of the prior consultation visit. The employer is not required to provide a copy of the consultant’s written report to the compliance officer, except to the extent that disclosure of information contained in the report is required by 29 CFR 1910.1020. During a subsequent enforcement action, if Iowa OSHA Enforcement independently determines there is reason to believe that the employer failed to correct serious hazards identified during the consultation visit, created the same hazards again, or made false statements to the bureau of consultation and education in connection with the consultation program, Iowa OSHA Enforcement may exercise its authority to obtain the consultation report.

d. If the employer chooses to provide a copy of the consultant's report to the compliance officer, the report may be used to determine the extent to which an inspection is required and as a factor in determining proposed penalties. Iowa OSHA Enforcement may impose minimal penalties if a consultant previously identified a hazard and the employer is complying with the consultant's recommendations in good faith.

These rules are intended to implement Iowa Code chapter 88.

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¹ Rules renumbered and rescinded, see IAB 5/6/87.