

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.** The chapter contains procedures under which the division of labor services, bureau of consultation and education provides on-site consultative services to employers. The service is available at no cost to employers to assist them in establishing effective occupational safety and health programs for providing their employees employment and a place of employment which is safe and healthful. The overall goal is to prevent the occurrence of injuries and illnesses which may result from exposure to hazardous working conditions and from hazardous work practices. The principal assistance will be provided at the employer's worksite, but off-site assistance may also be provided by telephone and correspondence, and at locations other than the employer's worksite, such as the offices of the division of labor services. At the worksite, the consultant will, within the scope of the employer's request, evaluate the employer's program for providing employment and a place of employment which is safe and healthful, as well as identify specific hazards in the workplace, and will 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 as needed to make the employer self-sufficient in ensuring safe and healthful work and working conditions. Although on-site consultation is conducted independent of the activities of the division of labor services' bureau of occupational safety and health (IOSH enforcement), and the discovery of hazards shall not mandate citations or penalties, the employer remains under the statutory obligation to protect employees, and, in certain instances, the employer shall be required to take necessary protective action. Employer correction of hazards identified by the consultant during a comprehensive workplace survey, and implementation of certain core elements of an effective safety and health program and commitment to the completion of others may serve as the basis for employer exemption from certain enforcement activities by the bureau of occupational safety and health (IOSH enforcement).

The division of labor services encourages employers to request on-site consultative visits. The service is available to both private and public employers.

Employers seeking information regarding consultative services should contact Chief, Bureau of Consultation and Education, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

**875—8.2(88) Definitions.** The definitions and interpretations contained in Iowa Code section 88.3 shall be applicable to the terms when used in this chapter. As used in this chapter unless the context clearly requires otherwise:

“*Act*” means the Iowa Occupational Safety and Health Act, Iowa Code chapter 88.

“*Commissioner*” means the labor commissioner of the division of labor services of the department of workforce development.

“*Compliance officer*” means a compliance safety and health officer employed by the occupational safety and health bureau of the division of labor services (IOSH 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 which is safe and healthful.

“*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 which is such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through the procedures set forth in subrules 8.4(3), 8.4(4) and 8.4(6).

“*Off-site consultation*” means the provision of consultative assistance on occupational safety and health issues away from an employer’s worksite by means such as telephone and correspondence, and at locations other than the employer’s worksite, such as the offices of the bureau of consultation and education.

“*On-site consultation*” means the provision of consultative assistance on an employer’s occupational safety and health program and on specific workplace hazards through a visit to an employer’s worksite. It includes a written report to the employer on the findings and recommendations resulting from the visit. It may include training and education needed to address hazards, or potential hazards, at the worksite.

“*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 which is safe and healthful.

#### **875—8.3(88) Request and scheduling of an on-site consultative visit.**

**8.3(1) *Employer requests.*** An on-site consultative visit will be provided only upon the written request of the employer, and shall not result from the enforcement of any right of entry under law. When making the request, an employer in a small, high hazard establishment is encouraged to include within the scope of the request all working conditions at the worksite 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 a limited request is at issue, the consultant shall limit review and provide assistance only with respect to those working conditions, hazards, or situations specified; except that if the consultant observes, in the course of the on-site visit, hazards which are outside the scope of the request, the consultant shall treat the hazards as though they were within the scope of the request. On-site consultative services may be requested to assist in the abatement of hazards cited during an enforcement inspection. However, an on-site consultative visit may not take place after an enforcement inspection until the conditions set forth in 8.5(2) “c” have been met.

**8.3(2) *Scheduling priority.*** Priority is assigned to requests from employers with the most hazardous operations, with primary attention to smaller employers. Preference is given to smaller business, based on their number of employees, with an emphasis on those workplaces of a highly hazardous nature and to requests where possible imminent danger conditions are believed to exist.

#### **875—8.4(88) Conduct of a visit.**

**8.4(1) *Structured format.*** An initial on-site consultative visit shall consist of an opening conference where the employer shall be advised as to the responsibilities under state law, an examination of those aspects of the employer’s safety and health program which relate to the scope of the visit, a walk through the workplace and a closing conference where the employer shall be informed of hazards and the recommended corrective measures. An initial visit may include training and education for employers and employees, if the employers request the assistance and if the need for the training and education is revealed by the walk through the workplace and the examination of the employer’s safety and health program. 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, or as necessary to verify the correction of serious hazards identified during previous visits. A compliance inspection may, in some cases, be the basis for a visit limited to education and training, assistance with the employer’s safety and health program, or technical assistance in the correction of hazards.

**8.4(2) *Employee participation.*** The consultant retains the right to confer with individual employees 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. In addition, employees, their representatives, and members of a workplace joint safety and health committee, may participate in the on-site consultative visit, 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.

**8.4(3) *On-site activity.*** Activity during the on-site consultative visit will be focused primarily on those conditions, hazards or situations regarding which the employer has requested assistance. 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.

To the extent of their capability and training, consultants shall identify and provide advice on the elimination of those 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 consultative visit. The consultant shall conduct sampling and testing, with subsequent analysis, as may be necessary to confirm the existence of a safety or health hazard. Advice and technical assistance on the elimination of identified safety and health hazards may be provided to employers during and after the on-site consultative visit. However, the advice and assistance shall not include engineering services or the provision of engineering design solutions.

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

At the time 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. An opportunity for an expeditious informal discussion with the chief of the bureau of consultation and education regarding the period of time established for the correction of a hazard or any other substantive findings of the consultant shall be held if the employer requests the informal discussion within 15 working days from receipt of the consultant's report.

**8.4(4) *Employer's obligations.*** An employer must take immediate action to eliminate employee exposure to a hazard which, 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 the bureau of occupational safety and health and provide relevant information.

An employer must also take the necessary action to eliminate or control employee exposure to any identified serious hazard. 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. An employer may request, and the chief of the bureau of consultation and education may grant, an extension of the time established for the correction of a serious hazard when the employer demonstrates having made a good faith effort to correct the hazard within the established time frame; shows evidence that correction has not been completed because of factors beyond the employer's reasonable control; and shows evidence that the employer is taking all available interim steps to safeguard the employees against the hazard during the correction period. If the employer fails to take the action necessary to eliminate a serious hazard within the established time frame or any extensions thereof, the chief of the bureau of consultation and education shall immediately notify the chief of the bureau of occupational safety and health and provide relevant information. The chief of the bureau of occupational safety and health shall make a determination, based upon a review of the facts, whether enforcement activity is warranted.

**8.4(5) *Confirmation of hazard correction.*** After correction of all serious hazards, the employer shall confirm in writing to the chief of the bureau of consultation and education the correction of the hazards, unless correction of the serious hazards was verified by direct observation by the consultant.

**8.4(6) *Written report.*** A written report shall be prepared for each visit and sent to the employer. The report shall restate the employer's request and describe the working conditions examined by the consultant; evaluate the employer's program for ensuring safe and healthful employment and provide

recommendations for making the program effective; identify specific hazards and describe their nature, including reference to applicable rules; identify the seriousness of the hazards; and to the extent possible, shall include suggested means or approaches to their correction. Additional sources of assistance shall also be indicated, if known, including the possible need to procure specific engineering consultation, medical advice and assistance, and other appropriate items. The report shall indicate the completion date for each serious hazard.

**8.4(7) Confidentiality of trade secrets.** The consultant will preserve the confidentiality of the information obtained as a result of a consultative visit which contains or might reveal a trade secret of the employer.

**875—8.5(88) Relationship to enforcement.**

**8.5(1) Confidentiality.** The identity of an employer requesting on-site consultation as well as the file of the consultant's visit shall not be forwarded or provided to the bureau of occupational safety and health, unless the employer fails to take the necessary action to protect employees from a hazard considered by the consultant to be an imminent danger or serious hazard.

**8.5(2) Effect upon scheduling.**

*a.* An on-site consultative visit already in progress shall have priority over compliance inspections by the bureau of occupational safety and health except as provided in 8.5(2) "b." The consultant and the employer shall notify the compliance officer of the visit in progress and request delay of the inspection until after the visit is completed. An on-site consultative visit 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 closing conference; except that for periods which exceed 30 days from the initiation of the opening conference, the commissioner may determine that the inspection will proceed. For working conditions, hazards, or situations not covered by the request, the on-site consultative visit shall be considered in progress only while the consultant is at the place of employment.

*b.* The consultant shall terminate an on-site consultative visit already in progress if one of the following kinds of compliance inspection by the bureau of occupational safety and health is about to take place:

1. Imminent danger investigations.
2. Fatality/catastrophe investigations.
3. Complaint investigations.
4. Other critical inspections as determined by the commissioner.

*c.* An on-site consultative visit 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. An enforcement inspection will also be considered "in progress" in cases where entry is refused, until such times as the inspection is conducted, 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 consultative visit 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 only take place with regard to those citation items which have become final orders.

*d.* When an employer requests and undergoes a consultative visit at an establishment covering all conditions and operations in the place of employment related to occupational safety and health; corrects all hazards that have been identified during the course of the consultative visit within established time frames, and posts notice of their correction when complete; demonstrates to the consultant that certain core elements of an effective safety and health program are in effect, and that the remaining elements of an effective safety and health program shall be implemented within a reasonable, established time frame; and agrees to request a consultative visit if major changes in working conditions or work processes occur which may introduce new hazards, the employer may, upon request, be exempt from a general schedule enforcement inspection for a period of one year from the end of the closing conference of the consultative visit. Between the time of election to participate in the process required to qualify for the exemption and

completion of the process, the employer must post a notice of the participation. When an employer requests consideration for an inspection exemption under this rule, the same procedures for correction of other-than-serious hazards shall apply as this chapter requires for serious hazards.

**8.5(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 inspection, a compliance officer is not precluded from finding hazardous conditions or violations of standards or rules for which citations would be issued and penalties proposed.

*b.* The hazard identification and correction assistance given by the consultant, or the failure of the consultant to point out a specific hazard, or other possible errors or omissions by the consultant shall not be binding upon a compliance officer, and shall not affect the regular conduct of a compliance inspection, or preclude the finding of alleged violations and the issuance of citations, or 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 consultative 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 875—10.20(88), specifically 29 CFR 1910.20. However, if the employer chooses to provide a copy of the consultant's report to the compliance officer, it may be used to determine the extent to which an inspection is required and as a factor in determining employer's good faith for the purpose of proposing penalties.

**875—8.6** Rescinded, effective June 10, 1987.

These rules are intended to implement Iowa Code sections 84A.1, 84A.2, 88.2 and 88.16.

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