



## Ohio Revised Code

### Section 4167.09 Application for temporary variance or for variance from standard.

Effective: September 10, 2007

Legislation: House Bill 100 - 127th General Assembly

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(A) Any public employer affected by a proposed rule or Ohio employment risk reduction standard or any provision of a standard proposed under section 4167.07 or 4167.08 of the Revised Code may apply to the administrator of workers' compensation for an order granting a temporary variance from the standard or provision. The application for the order and any extension of the order shall contain a reasonable application fee, as determined by the bureau of workers' compensation board of directors, and all of the following information:

(1) A specification of the Ohio public employment risk reduction standard or provision of it from which the public employer seeks the temporary variance;

(2) A representation by the public employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that the public employer is unable to comply with the Ohio employment risk reduction standard or provision of it and a detailed statement of the reasons for the inability to comply;

(3) A statement of the steps that the public employer has taken and will take, with dates specified, to protect employees against the hazard covered by the standard;

(4) A statement of when the public employer expects to be able to comply fully with the Ohio employment risk reduction standard and what steps the public employer has taken and will take, with dates specified, to come into full compliance with the standard;

(5) A certification that the public employer has informed the public employer's public employees of the application by giving a copy of the application to the public employee representative, if any, and by posting a statement giving a summary of the application and specifying where a copy of the application may be examined at the place or places where notices to public employees are normally posted, and by any other appropriate means of public employee notification. The public employer



also shall inform the public employer's public employees of their rights to a hearing under section 4167.15 of the Revised Code. The certification also shall contain a description of how public employees have been informed of the application and of their rights to a hearing.

(B) The administrator shall issue an order providing for a temporary variance if the public employer files an application that meets the requirements of division (A) of this section and establishes that all of the following pertaining to the public employer are true:

(1) The public employer is unable to comply with the Ohio employment risk reduction standard or a provision of it by its effective date because of the unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the Ohio employment risk reduction standard or provision of it or because necessary construction or alteration of facilities cannot be completed by the effective date of the standard.

(2) The public employer is taking all available steps to safeguard the public employer's public employees against the hazards covered by the Ohio employment risk reduction standard.

(3) The public employer has an effective program for coming into compliance with the Ohio employment risk reduction standard as quickly as practicable.

(4) The granting of the variance will not create an imminent danger of death or serious physical harm to public employees.

(C)(1) If the administrator issues an order providing for a temporary variance under division (B) of this section, the administrator shall prescribe the practices, means, methods, operations, and processes that the public employer must adopt and use while the order is in effect and state in detail the public employer's program for coming into compliance with the Ohio employment risk reduction standard. The administrator may issue the order only after providing notice to affected public employees and their public employee representative, if any, and an opportunity for a hearing pursuant to section 4167.15 of the Revised Code, provided that the administrator may issue one interim order granting a temporary order to be effective until a decision on a hearing is made. Except as provided in division (C)(2) of this section, no temporary variance may be in effect for longer than the period needed by the public employer to achieve compliance with the Ohio



employment risk reduction standard or one year, whichever is shorter.

(2) The administrator may renew an order issued under division (C) of this section up to two times provided that the requirements of divisions (A), (B), and (C)(1) of this section and section 4167.15 of the Revised Code are met and the public employer files an application for renewal with the administrator at least ninety days prior to the expiration date of the order.

(D) Any public employer affected by an Ohio employment risk reduction standard or any provision of it proposed, adopted, or otherwise issued under section 4167.07 or 4167.08 of the Revised Code may apply to the administrator for an order granting a variance from the standard or provision. The administrator shall provide affected public employees and their public employee representative, if any, notice of the application and shall provide an opportunity for a hearing pursuant to section 4167.15 of the Revised Code. The administrator shall issue the order granting the variance if the public employer files an application that meets the requirements of division (B) of this section, and after an opportunity for a hearing pursuant to section 4167.15 of the Revised Code, and if the public employer establishes to the satisfaction of the administrator that the conditions, practices, means, methods, operations, or processes used or proposed to be used by the public employer will provide employment and places of employment to the public employer's public employees that are as safe and healthful as those that would prevail if the public employer complied with the Ohio employment risk reduction standard. The administrator shall prescribe in the order granting the variance the conditions the public employer must maintain, and the practices, means, methods, operations, and processes the public employer must adopt and utilize in lieu of the Ohio employment risk reduction standard that would otherwise apply. The administrator may modify or revoke the order upon application of the public employer, public employee, or public employee representative, or upon the administrator's own motion in the manner prescribed for the issuance of an order under this division at any time during six months after the date of issuance of the order.