

What is a variance?

Generally, a variance is an exception to 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 employees as well as or better than OSHA standards. See *Title 29 of the Code of Federal Regulations (CFR)*, Part 1905 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*.

What is a temporary variance?

A temporary variance allows employers a short-term exemption from a standard when they cannot comply with OSHA requirements by the prescribed 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 employees. 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.

What is an 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 to authorized employee representatives and posting a copy prominently in the workplace.

What is a permanent variance?

A permanent variance grants an exemption from 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 employees know they have filed the application and that the employees 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.

What is an 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 (OSH Act)*.

What is a 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 employees 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.

Where do I apply for a variance?

That depends 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, Room N-3655, 200 Constitution Avenue, NW, 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 programs. *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 only public sector employees.

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.

How can I get more information on safety and health?

For more details on variance applications, visit us at <http://www.osha.gov/dts/otpc/vari/apply.html>. OSHA has various

publications, standards, technical assistance, and compliance tools to help you, and offers extensive assistance through workplace consultation, voluntary protection programs, strategic partnerships, alliances, state plans, grants, training, and education. OSHA's *Safety and Health Program Management Guidelines* (*Federal Register* 54:3904-3916, January 26, 1989) detail elements critical to the development of a successful safety and health management system. This and other information are available on OSHA's website.

- For one free copy of OSHA publications, send a self-addressed mailing label to OSHA Publications Office, 200 Constitution Avenue N.W., N-3101, Washington, DC 20210; or send a request to our fax at (202) 693-2498, or call us toll-free at (800) 321-OSHA.
- To order OSHA publications online at www.osha.gov, go to **Publications** and follow the instructions for ordering.
- To file a complaint by phone, report an emergency, or get OSHA advice, assistance, or products, contact your nearest OSHA office under the U.S. Department of Labor listing in your phone book, or call toll-free at **(800) 321-OSHA (6742)**. The teletypewriter (TTY) number is (877) 889-5627.
- To file a complaint online or obtain more information on OSHA federal and state programs, visit OSHA's website.

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. See also OSHA's website at www.osha.gov.

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