

The background of the page is a photograph of a wall with significant mold growth. The mold is dark and fuzzy, covering large areas of the wall. A white pipe runs horizontally across the upper right portion of the image. The wall itself is a mix of grey and brown tones, with some areas appearing more textured and others smoother.

# **Commercial Building Owner's Guide to Compliance with New York State Mold Program**

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**Chubb Global Risk Advisors (CGRA)**



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Imagine you own a commercial building in Hoboken, New Jersey, and several of your tenants are complaining of a mildew smell in their spaces. You hire an industrial hygiene firm to investigate the concern, and their findings indicate the culprit is mold, created by leaking roof drains that allowed moisture to impact walls and ceilings on your building perimeter. You contract a plumber to repair the leaking drains, and consult your industrial hygiene firm for recommendations to remediate mold-impacted building materials. You contract with a local restoration firm, and within a week, your problem is gone.

Across the river in New York City, you have the same issue in a commercial office space. You probably assume you can address the concern using the same team that resolved the Hoboken mold complaints. Is this the case? It was several years ago, but not today.

In 2015, New York State joined the growing list of U.S. states promulgating regulations governing the licensing of mold assessors and remediation contractors. Signed by Governor Andrew Cuomo with an effective date of January 1, 2016, Bill S3667D-2013 amended New York State laws by introducing Article 32 of the New York State Labor Law, the “Licensing of Mold Inspection, Assessment and Remediation Specialists and Minimum Standards” (henceforth referred to as “the regulation”). This legislation mandates the licensure of mold assessment and remediation specialists and sets minimum work standards for mold assessment and remediation professionals. The New York State Department of Labor created the new Mold Program responsible for enforcing the regulation.

The regulation defines “mold” as any indoor multi-cellular fungi growth capable of creating toxins that can cause pulmonary, respiratory, neurological, or other major illnesses after minimal exposure. Consequently, many events encountered by commercial building owners may fall into the “mold” assessment and remediation-regulated definition. For building owners and managers, understanding how to comply with this regulation will prevent regulatory risk, as well as ensuring any assessment or remediation work performed is provided by licensed professionals.

## Highlights of the Regulation



The New York State Mold Program requires training and licensing of individuals and firms who wish to perform mold assessment or remediation services.

### **Minimum requirements for obtaining an individual license for mold assessment/remediation personnel include:**

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- Being 18 years of age or older; having satisfactorily completed the New York State Department of Labor-approved coursework, including training on the appropriate use and care of personal protection equipment;
- Having paid appropriate state license fees; and, maintaining valid submitted insurance certificates evidencing workers compensation coverage, if required, as well as liability insurance of at least fifty thousand dollars (\$50,000).

### **The regulation established minimum work standards for mold assessments and remediation activities by licensed professionals, including:**

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- Protection against fraud by requiring an independent mold assessment to define the scope of the remediation work. The assessment firm on the project must be independent of any remediation firm that is ultimately retained;
- Identification of disinfectant products, consistent with U.S. Environmental Protection Agency standards;
- Requirement for preparation of a written assessment report and remediation work plan, if remediation is required;
- Identification of personal protection equipment, as necessary;
- Posted notice of the project and the contractor's licenses; and
- Completion of a post-remediation inspection as part of work area clearance. For example, a remediation project was recently completed at a bank branch location over a weekend period. The licensed mold assessor performed a detailed visual inspection following completion of the remediation work and issued a "mold remediation completion" letter to the bank stating that the remediation was completed in accordance with the regulation.

### **Exemptions to the Requirements of the Regulation**

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There are some exemptions from these licensure requirements for mold assessment and/or remediation in certain situations.

#### **The following persons are not required to obtain a license in order to perform mold assessment or remediation:**

1. A residential property owner who performs mold assessment, remediation, or abatement on his or her own property.
2. A non-residential property owner or the employee of such owner who performs mold assessment, remediation, or abatement on an apartment building owned by that person that has no more than four dwelling units.
3. An owner, managing agent, or full-time employee of an owner or managing agent who performs mold assessment or remediation or abatement on commercial property or a residential apartment building of more than four dwelling units owned by the owner. However, the exemption shall not apply if the managing agent or employee engages in the business of performing mold assessment or remediation for the public.
4. A federal, state or local governmental unit or public authority and employees thereof that perform mold assessment, remediation, or abatement on any property owned.
5. The regulation also does not apply to projects involving less than 10 square-feet of mold or suspected mold-impacted materials.

## Compliance for Building Owners

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Building owners also licensed by the state should retain the services of a mold assessor, working with a mold assessment firm whenever there is a potential moisture intrusion/mold-related issue.

Following completion of an on-site assessment, the licensed mold assessor will submit a written report to the building owner. If mold is identified in quantities in excess of 10 square feet, a Mold Remediation Work Plan will then be prepared. The work plan will provide specific details regarding the scope of the project, work area preparation requirements, remediation and cleaning methods, personal protective equipment, and project clearance requirements. It is important to note that the regulation does NOT require any type of air sampling as part of project clearance/closeout. Clearance of work areas is left to the discretion of the licensed assessor and may be limited to a thorough visual inspection of the space. Clearance requirements must be identified in the Work Plan. It is prudent to check with your licensed mold assessor on their advice regarding final clearance criteria following a mold remediation action. You, as the building owner, may want additional protection through air sample collection and analysis, or through surface testing.

**Article 32 of the New York State Labor Law may be viewed here:**

<https://labor.ny.gov/formsdocs/wp/SH120.pdf>

## Connect With Us

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For more information about protecting your business, contact Chubb Global Risk Advisors at [globalriskadvisors@chubb.com](mailto:globalriskadvisors@chubb.com) or 866-357-3797

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