PLAINTIFF'S EXHIBIT
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OSHA News Briefs

Employee complaints to receive new treatment

OSHA has established a new procedure to insure full investigation of employee complaints. When a worker complains of a workplace hazard or of discrimination (e.g., being fired for registering a complaint) for exercising his rights under the Occupational Safety and Health Act, OSHA field personnel must now:

- make sure that the complainant is fully informed of his rights;
- gather sufficient information from the complainant to determine whether the complaint concerns a hazard or discrimination or both;
- promptly transmit all discrimination complaints to the Regional Discrimination Complaint Coordinator (RDCC) so that he can evaluate possible safety or health hazard ramifications;
- inform RDCC's if any new evidence of safety or health hazards is discovered while investigating discrimination complaints;
- maintain, at the receiving office, a log of all complaints and of which complaints are forwarded to another office.

OSHA has also added specific procedures to be followed in each kind of complaint case. When a worker lodges a complaint about a safety or health hazard, field personnel must, with Area Director approval:

- make sure the worker knows he cannot be discriminated against for making the complaint;
- respond to imminent danger complaints within 24 hours, to serious hazard complaints within three working days, and to nonserious hazard complaints within seven working days.

When a worker claims that he has been discriminated against for registering a complaint, field personnel must:

- gather from the complainant enough information to determine what safety or health hazards exist; how serious they are, and whether they call for OSHA inspection;
- have technical evaluation of potential hazards made by the senior safety-health professional in the field office;
- respond to evidence of a hazard discovered during a discrimination complaint investigation as they would to a hazard complaint: i.e., within 24 hours for imminent danger, three days for serious hazards, seven days for nonserious hazards;
- schedule a compliance inspection if the evidence warrants it, even if the complainant does not want to file a safety and health complaint.

The basic intent of the new procedures is to make certain that discrimination investigators notify safety and health personnel of any hazards they encounter and that safety and health personnel inform discrimination officers if they uncover a discriminatory situation. Until OSHA's Field Operations Manual (Complaints) is revised to include these new procedures, a Field Information Memorandum describing them and supplementing existing instructions has taken immediate effect.

State consultation programs and OSHA enforcement

The Department of Labor has published a notice clearly separating state consultation programs from OSHA's enforcement and compliance program.

OSHA has contracts with 13 states to pay state employees as safety and health consultants providing on-site advice about meeting OSHA requirements. Although the programs are separate and distinct from OSHA enforcement, a consultant must act, and perhaps notify OSHA, if, in the course of his visit, he observes *serious* hazards. Employers have mistakenly interpreted this to mean that if a consultant discovers *any* hazard covered by OSHA standards and regulations, the employer must abate it immediately or the consultant will contact OSHA for enforcement action.

OSHA's clarification limits the area of mandatory consultant action to "imminent danger" situations and to those situations in which there is a substantial probability that death or serious physical harm could occur. Where an employer does not correct an "imminent danger" situation disclosed during the consultative visit, the consultant must immediately notify the affected employees and advise the nearest OSHA regional administrator. If there is substantial probability that death or serious physical harm could result from a hazard disclosed during the consultation, the consultant must immediately notify the employer of the hazard and afford him a reasonable time to eliminate the cause. When a second consultative visit reveals that the serious danger has not been eliminated, the consultant must then notify the OSHA regional administrator.

Jurisdictions currently providing contractual consultation services affected by the clarification are: Massachusetts, New York, Puerto Rico, Virginia, West Virginia, Delaware, Ohio, Wisconsin, Texas, Arkansas, Oklahoma, Kansas, and Nebraska.

Records of asbestos exposure to be kept for 20 years

In response to a court-directed review of certain provisions of the asbestos standard, OSHA has lengthened from three to 20 years the time employers must retain monitoring records of employee exposure to the substance.

The U.S. Court of Appeals for the District of Columbia had specifically ordered the Labor Department to re-examine the standard's three-year record retention period for exposure monitoring "for such modification or clarification as may be necessary to insure that the statutory objectives [of the OSH Act] will be fulfilled."

The decision to extend the retention period to 20 years takes into account the minimum latency period for many asbestos-related diseases. The agency believes that the data obtained as a result of the new retention period will be useful in detecting patterns of health hazards associated with occupational exposure to asbestos.

Since the standard's initial three-year retention period has now lapsed, certain of the monitoring records being kept by employers would have been legally subject to destruction were it not for the new rule, which took effect March 19.

New policy on construction job safety responsibility

OSHA has proposed new policy guidelines reassessing employer responsibility for safety and health conditions on multi-employer construction sites.

Several recent court decisions led OSHA to review its policy of issuing citations only to employers who expose

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