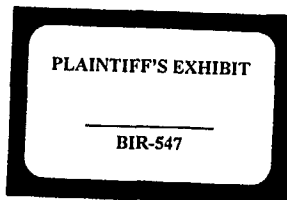




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Occupational Health & Safety Report

Associated Industries of Massachusetts · 4005 Prudential Tower · Boston 02199

Reminder: Post OSHA Form 200

Employers are reminded they should post their completed OSHA Form 200 "Log and Summary of Occupational Illnesses and Injuries" in a conspicuous location in the plant for at least 30 days after January 1, 1981.

For a copy of OSHA's booklet entitled "Recordkeeping Requirements Under the Occupational Safety and Health Act of 1970", write to Paul Colson at AIM.

OSHA: The Shape of Things to Come

With the coming of the new administration, there will undoubtedly be many changes in OSHA particularly since Mr. Reagan has spoken out against "over regulation." As Mr. Reagan has emphasized on numerous occasions, "consultation is better than regulation".

Who Will Head Up OSHA?

Of great importance is the answer to the question, who will be the new head of OSHA? There are rumors that Eula Bingham, the present head who has been obviously oriented toward organized labor, will be replaced by someone closely identified with industry or at least someone who has an understanding of industry and its problems associated with compliance with the multiplicity of Federal Regulations. Such a replacement would be a welcome change for industry since the last three incumbents have been drawn from the academic world (2) and from organized labor, segments of our society not noted for their sympathetic understanding of how industry works and its needs.

The Nature of Standards

OSHA has already begun to change the nature of its standards from rigid, inflexible "specification" standards to more flexible "performance" requirements in which employers have a greater variety of compliance options.

We can expect arrangements will be made for greater participation in the standards setting process for representatives of industry and thus ensure that the realities of operational safety and health will be taken into account to a greater extent.

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New and Revised Standards Expected

We have been advised that the following revised or new proposed standards will be issued in the Federal Register during the first half of 1981.

Electrical: Final form of Part I

Hearing Conservation: A first section of a total noise standard.

Generic Carcinogen Standard: A slight modification of the original proposed standard.

Conveyors: A proposed new standard.

Labeling of Hazardous Substances: Another proposed new standard.

As soon as certain dates have been set for the issuance of these items, AIM will schedule its annual Spring OSHA Up-Date and notice will be published in this bulletin.

Budget Limitations?

The Senate and House have both approved OSHA's budget for the coming year at the same level as last year but that does not mean that the administration could not reduce the funds for OSHA and thus curtail its activities without actually amending the Occupational Safety and Health Act.

OTHER POSSIBLE CHANGES

Inspection Limitations

There is a strong possibility that Congress will act on a number of bills introduced in the last session (notably the Schweiker amendment) or even stronger ones in the new session to limit OSHA inspections to only locations with excessive accident and occupational illness frequency rates, fatalities, known imminent danger situations or where employees have filed complaints.

Such amendments, while exempting many plants from inspections, would not relieve them from absolute compliance with all OSHA standards nor in any way abridge the existing employee rights under the act.

The End of the First Instance Penalties?

There has been considerable agitation in Congress to change the penalty provisions so that employers would be subject to penalization only if they fail to abate cited violations within the agreed upon abatement period. There does not seem to be much likelihood of this change coming about because the elimination of the "first instance" penalty provision in the act would rob OSHA of its major enforcement leverage.

Consultation vs. Enforcement

As indicated above, there is a good possibility that OSHA's "consultation" programs free of penalties and citations will be extended and administered not only by the various States (as at present) but possibly also by OSHA itself. Industry would certainly welcome such a change although most of organized labor would oppose it.

Endangerment Legislation

Apart from OSHA but closely related is the probable re-introduction of the Sen. Kennedy Federal Criminal Code reform bills, one section of which would provide for criminal penalties, including jail sentences for officials who are guilty of conduct they know would place other persons in imminent danger of death or serious bodily injury.

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A similar House Bill (filed by Miller of California) would impose criminalties on corporate managers who knowingly fail to report serious hazard product or business practice to the appropriate Federal Agency and to affected employees, in writing, within 30 days of discovering the hazard.

While many observers in Washington doubt that either bill will pass in form, some watered down version may have a chance in the House but not in conservative Senate.

OSHA Guidelines on Review of Medical Information

The recently issued standard on Employee Access to Medical Records provides OSHA access to the same records provided they are qualified and authorized.

On November 4, 1980, OSHA issued a set of instructions to all field offices lining the qualifications to be met by inspectors who will be authorized and copy records when it is essential to do so to check compliance with OSHA standards on toxic materials or harmful agents.

OSHA's definition of "qualified persons" includes industrial hygienists, persons with training in medical disciplines including nurses and physicians.

In inspections under standards other than those itemized, OSHA is limiting recording and taking off-site only medical record documentation of the fact of compliance or noncompliance. Stated purposes include a determination of whether employer took corrective action recommended by a physician, or informed of the recommended action required by the standard. Review of the medical opinions could be relevant to the type of enforcement action OSHA might take against an employer, or could serve as proof of the appropriateness of enforcement action. Medical opinions might also demonstrate that an imminent danger was created by present working conditions in light of current health status.

OSHA must determine whether access is required for enforcement purposes can be obtained. Access to personally identifiable medical information is not permitted, except for these stated purposes, unless there is a written order, or in a case where written consent of an employee is obtained or physician consults with an employer's physician. When possible, the records be reviewed on-site, and when they are taken off-site, an OSHA investigator assigned to protect the information.

Supreme Court Partially Stays Lead Standard

The Supreme Court has stayed parts of OSHA's lead standard pending the final disposition of petitions for certiorari by the Lead Industries Association and related industry groups.

Stayed by the court are the following sections:

- 1910.1025 (e) 1: Engineering and Work Practice Controls
- 1910.1025 (e) 4: By Pass of Interim Level
- 1910.1025 (e) 5: Mechanical Ventilation
- 1910.1025 (e) 6: Administrative Controls
- 1910.1025 (e) 3: Written Compliance Program except for paragraph
- 1910.1025 (f)(2)(ii) Specific respirator provisions
- 1910.1025 (i) to the extent it requires construction of new facilities
- 1910.1025 (j) 2 and (j) 3: Requirements for Biological monitoring
Medical examinations for zinc protoporphyrin
and multiple physician review
- 1910.1025 (n) Requirements for Signs, and
- 1910.1025 (r) Start up dates.

The Court provided the stay so the industry would not have to go to the cost of complying with sections of the standard which might be declared invalid in court review.

Asbestos Standard Challenged

The Sixth Circuit Court of Appeals rejected an employer's argument that OSHA's standard was unconstitutional when applied to the ambient air and at the same time refused to accept the employer's claim that there was no substantial evidence that compliance was economically feasible with available equipment.

Filing a petition for a writ of certiorari with the Supreme Court, the employer claimed that in order to achieve compliance he would have to construct equipment that would turn over the air in his plant every four minutes and that equipment would require the construction of an addition to the plant about half the size of the existing one. As a result of that expenditure, the employer would be forced out of business.

In its petition, the employer argued that the word "exposed" as used in the regulation must be interpreted to mean "breathing air into the lungs" since the exposure sought to be eliminated deals only with carcinogenic infections of the lungs. Under the interpretation made by the Secretary and the Appeals Court, said the employer, workmen completely insulated from breathing asbestos fibers into their lungs could be "exposed" by merely walking through a contaminated area.

This current litigation further illumines OSHA's difficulty in establishing permanent occupational health standards since it follows the lengthy dispute over the cotton dust, benzene, and lead standards.

OSHA's difficulties can be further understood when it is realized that there are approximately 2,500 severely toxic materials for which comprehensive standards must ultimately be promulgated. Since only 26 comprehensive standards covering toxic materials have been issued since OSHA was established in 1971, it would seem highly unlikely they will be able to complete their task during our life time even if the device of generic standards is employed.

Tough Penalty for Lack of Hearing Conservation

A forging company was assessed \$5,000 by an OSHRC Judge for willfully failing to maintain a hearing conservation program utilizing periodic audiometric testing, training in use of ear devices, and referral of employees to a doctor when tests revealed severe shifts in hearing. Although several employees showed hearing shifts of over 20 decibels in the employer's sporadic audiometric testing, none was referred to a physician because of a fear of worker's compensation claims, according to testimony of a company nurse. The employer failed to use the type of ear plugs recommended by a state consultant and made no effort to train employees or to require them to use hearing protection devices, the Judge found, and the employer failed to administer audiometric tests annually, as required for an effective program.

Any employer whose operations exceed the OSHA noise level (TWA) of 90 dBA should have a hearing conservation program, particularly because of the imminence of revised noise control standards (the hearing conservation section only) with even stricter requirements; i.e. probably requiring more frequent audiometric testing and at levels exceeding 85 dBA and hearing protection for employees showing hearing loss.

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