



Oregon
Theodore R. Kulongoski, Governor

Department of Consumer and Business Services
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August 17, 1999

Reviewed: August 15, 2007

Chad L. Harvey, Senior Accident Prevention Specialist
EBI Companies
P.O. Box 7667
Eugene, OR 97401-0202

Dear Mr. Harvey:

This is in response to your letter of August 5, 1999, requesting clarifications of OAR 437-002-1310.134, "Respiratory Protection."

1. Q: What constitutes an adequate health hazard assessment (qualitative analysis) of all health exposures in the workplace to meet the minimum OR-OSHA standards while not conducting air monitoring for all processes/exposures?

A: An adequate health-hazard analysis of all health exposures in the workplace would, at a minimum, ensure that none of the permissible exposure limits (PELs) listed in OAR 437-002-1910.1000, "Air Contaminates" are exceeded. A professional trained in occupational health hazards, such as an industrial hygienist, may be able to make professional judgements based on PELs, methods of use, conditions of use, quantities used, etc.

However, air monitoring is still the most effective method of assessing exposure levels.

2. Q: Who is qualified to ensure the employee is adequately protected assuming the assessment results in no air monitoring is necessary?

A: Oregon OSHA's rules do not specify who is qualified to do this. However, air monitoring is still the most effective method of assessing airborne exposure levels.

3. Q: What if there was a discrepancy between an OR-OSHA health inspection and the hazard assessment criteria the employer completed (not adequate--deemed by the inspector). Would the employer be cited? What are the legal liabilities of the health hazard assessor?

A: If, during the course of an inspection, an overexposure is noted, and the employer had not provided adequate protection to affected employees, the employer may be cited. Overexposures are usually found by performing air monitoring.

4. Q: If the employer elected to not develop a respiratory protection program and adequately completed the health hazard assessment would that employer be compliant to OR-OSHA standards?

A: If the employer found that all employee exposures were within the limits of 1910.1000 and no other codes required respiratory protection, then a respiratory protection program is not required.

5. Q: Does OR-OSHA require medical monitoring for voluntary usage? What other requirements are necessary for the employer under voluntary usage?

A: Medical monitoring is required for all employees who wear respirators. The only exception to this is when employees wear filtering facepiece-type respirators on a voluntary basis. OAR 437-002-1910.134(c)(2) outlines the requirements when respirator use is voluntary. This includes providing a copy of Appendix D of the standard to employees and ensuring that the respirators are properly cleaned, stored, and maintained.

6. Q: If an employer mandates non-voluntary usage of a respirator in his/her workplace, (assuming the employer completed qualitative and quantitative hazard assessments, which were documented at safe levels) is that legal or an acceptable policy?

A: Oregon OSHA standards are minimum standards by which all employers must abide. There are no standards that forbid employers from exceeding the standards, and employers are often encouraged to exceed these minimum standards in order to ensure safe and healthful work environments.

7. Q: What kind of legal dangers are there in complying with the language in the standard?

A: We are unaware of any legal dangers in complying with any of our standards. Standards are generally not written to place employers at risk for ensuring safe and healthful work environments. However, this question may be better suited to be asked of an attorney.

8. Q: What is a practical way for a small employer to comply with this standard, meet ADA and OR-OSHA requirements, and protect the worker? These items should work "hand in hand".

A: The Americans with Disabilities Act is not an Oregon OSHA standard. We do not see any discrepancies between complying with both Oregon OSHA standards and the ADA, and do see them as working together.

9. Q: Specifically what type of program should be developed?

A: The respiratory protection standard is a performance-based standard, and the programs are different for each workplace because each workplace, and the hazards present, is different.

10. Q: How should safety consultants approach this area while not leaving an employer legally liable in other areas?

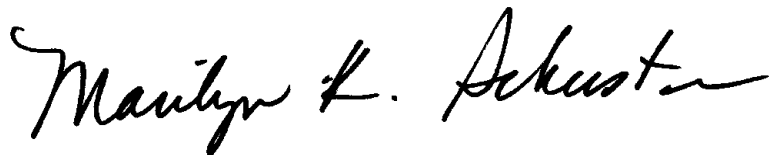
A: We are not aware of how complying with these rules leave employers legally liable in other areas. An attorney may be a more appropriate person to ask, as they are trained in issues of law.

11. Q: How can this program be cost effective from an injury prevention standpoint?

A: It is our understanding that the average initial cost of a worker's compensation claim is around \$10,000, and this number does not include follow-up examinations, treatment, retraining, new employee training, etc. It is also our understanding that ORS 654 implicitly explains that employers are responsible to ensure that each employee works in a safe and healthful work environment.

If you have any questions or if we can be of further assistance, please contact David McLaughlin in our Technical Section at (503) 947-7457.

Sincerely,

A handwritten signature in black ink that reads "Marilyn K. Schuster". The signature is written in a cursive, flowing style.

Marilyn K. Schuster, Manager
Standards and Technical Resources Section
Oregon Occupational Safety and Health Division