

OSHA Regulations Adopted and Upheld

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An employer's work environment may be closely regulated by federal health and safety standards. The Occupational Safety & Health Administration (OSHA) has the authority to create and enforce regulations designed to keep employees safe. Employers sometimes find these regulations confusing or overly burdensome. Employers can challenge the reasonableness of OSHA's regulatory standards, at the time these regulations are adopted or when they are enforced.

Last August, OSHA used its rulemaking authority to propose changes in the methods used to measure exposure to toxic substances and hazardous chemicals in the workplace. Notably, the new regulation did not lower the expected number of years that someone would be expected to remain on the job to less than 45 years, as had been proposed earlier. That change would have allowed greater yearly exposure to dangerous substances.

In this rule, OSHA did amend its standards to clarify that the personal protective equipment (PPE) and training requirements must be met for each and every employee covered by the standards.¹ Failure to comply for each covered employee can expose an employer to liability on a per-employee basis. Employers are not required to expand the types of PPE or training provided or to provide training or equipment to any non-covered employee. The amendments only clarify that the standards apply to each employee.

Three recent court decisions also provide insight to the application of OSHA regulations. Two of those decisions apply to employees who are exposed to blood in their work. The first court of appeals upheld the application of the OSHA regulation addressing the disposal of blood tube holders. In 2003, OSHA had issued guidance to clarify an older regulation which states that used needles "shall not be bent, recapped or removed," unless there is no feasible alternative or such action is required by a particular procedure. The guidance suggested that using reusable blood tube holders probably violated that standard. The court of appeals recently upheld that interpretation, when it enforced citations against MetWest, Inc. for allowing employees to remove needles from reusable blood tube holders.² Many health care providers have switched to using single-use holders.

¹ 73 Federal Register 75568 (Dec. 12, 2008), final rules effective Jan. 12, 2009.

² MetWest Inc. v. Secretary of Labor, No. 08-1061, 2009 U.S. App. LEXIS 6925 (D.C. Cir. April 3, 2009).

A second recent court of appeals decision dealt with treatment for employees under OSHA's bloodborne pathogens standard.³ Under that standard, employers are required to make the hepatitis B vaccine and other treatments available **at no cost** to employees who are exposed to bloodborne pathogens. A nursing home was cited for failing to pay two of its nurses for time spent receiving treatment during non-work hours after they received needlesticks. The OSHA citations for failing to pay these nurses was upheld by the court of appeals, since OSHA had determined that "cost" should include time spent and travel expenses to receive treatment.

The third recent court of appeals decision approved OSHA's standard for limiting employees' exposure to a toxic substance known as hexavalent chromium.⁴ This substance is contained in compounds used in metal electroplating and in producing chemical catalysts and pigments for textile dyes, paints, inks, glass and plastics. A final rule issued by OSHA in 2006 set the permissible exposure limit at one universal standard of 5 micrograms per cubic meter. The permissible level of exposure was approved by the court of appeals because OSHA had properly explained and supported the basis for the standard.

The Public Citizen Health Research Group and the United Steelworkers had argued that a lower standard of exposure was appropriate, based on significant health risks even at the lower level of exposure. The court upheld OSHA conclusion that less exposure was not technologically and economically feasible for some industries that use the substance. The court also allowed OSHA to adopt just one universal exposure standard, even though a lower standard may have been feasible in some industries.

To learn more about OSHA, join our webinar on May 27, 2009, entitled [OSHA Overview and Injury Prevention for "non-Experts"](#), by registering at <http://shop.msu.edu/SearchResults.asp?Cat=162>.

For information about the [Certified Employer Rights & Responsibilities Professional](#) seminar, which discusses OSHA, and other educational programs presented by Human Resources Executive Education & Development at the School of Labor and Industrial Relations, Michigan State University, visit <http://www.lir.msu.edu/hretc>

³ [Secretary of Labor v. Beverly Healthcare-Hillview](#), 541 F.3d 193 (3d Cir. 2008).

⁴ [Public Citizen Health Research Group v. OSHA](#), No. 06-1818 (3d Cir. Feb. 23, 2009).