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Occupational Safety & Health Administration Update

by **Thomas J. Gibney and Lynn Vuketich Luther**

The Occupational Safety & Health Administration (OSHA) recently announced several regulatory and policy changes that could significantly impact employers.

Employers Are Now Required to Pay for Personal Protective Equipment for Employees.

OSHA has amended the personal protective equipment (PPE) regulation to require employers to provide PPE to employees at no cost. The amendment does not require any additional PPE that was not previously mandated by the rules; it merely places the financial responsibility for the equipment on the employer. Employers must implement the PPE payment requirements no later than May 15, 2008.

Certain items are specifically excluded from the employer's obligation, including non-specialty safety-toe protective footwear (including steel-toe shoes or boots) and non-specialty prescription safety eyewear, if the employer permits such items to be worn off the job-site. The regulation also does not require employers to pay for everyday clothing, clothing that provides protection from the weather or for any PPE that is not required by OSHA standards.

An employer cannot require an employee to pay for PPE, but if an employee provides his or her own adequate protective equipment, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. Employers are required to pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

New Initiative Regarding Combustible Dust

Employers should be aware that OSHA has a heightened focus on combustible dust hazards in light of the February 7, 2008 explosion at the Imperial Sugar Refinery in Savannah, Georgia which killed thirteen workers and injured dozens more. The agency has stepped up enforcement efforts by reissuing its Combustible Dust National Emphasis Program and urging state-run occupational safety and health agencies to join OSHA in its focus on combustible dust hazards. OSHA also provided a two-hour refresher training on the subject to 700 compliance officers, and plans to focus inspections on employers that have an OSHA inspection history of combustible dust hazards.

OSHA's definition of combustible dust is expansive and reaches across many types of industry. OSHA considers combustible dust to include, but is not limited to:

- Wood dust
- Plastic dust and additives
- Other organic dust such as sugar, flour, paper, soap and dried blood
- Coal and other carbon dusts
- Biosolids
- Certain textile materials

OSHA has identified a variety of industries in which combustible dust could exist, including: agriculture, chemicals, food (e.g., candy, sugar, spice, starch, flour and feed), grain, fertilizer, tobacco, plastics, wood, forest, paper, pulp, rubber, furniture, textiles, pesticides, pharmaceuticals, tire and rubber manufacturing, dyes, metal processing (e.g., aluminum, chromium, iron, magnesium and zinc), recycling operations and fossil fuel power generation (coal). The applicable regulations vary depending on the industry involved, so employers should verify what is required to keep their facilities in compliance.

If you have any questions regarding these issues or any other OSHA matter, please contact Mr. Gibney or Ms. Luther. Both can be reached at our Toledo office (419-241-6000).



Mr. Gibney is a member of Eastman & Smith who practices in the areas of human resources management in the private and public sectors, employment litigation, private and public sector labor negotiations and contract application, workers' compensation, and federal and state safety regulation litigation.



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