Legal Aspects of the Occupational Environment

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The OSHA Law

- Occupational Safety and Health Act, PL 91-256, December 29, 1970
- Introduced by
  - Senator Harrison Williams (D, NJ)
  - Congressman William Steiger (R, WI)
    - (Williams – Steiger bill)
  - 1969 Congress, signed by President Nixon
The OSHA Law

- Agencies created by OSHAct
  - OSHA, Occupational Safety and Health Administration
  - NIOSH, National Institute for Occupational Safety and Health
  - OSHRC, Occupational Safety and Health Review Commission
  - NACOSH, National Advisory Committee on Occupational Safety and Health

- OSHRC
  - Review contested OSHA citations
  - Civil court rules
  - Contested decisions go to US Appeals Courts
  - After that to Supreme Court
The OSHA Law

- NIOSH
  - Conduct OSH research
  - Develop criteria and recommendations for new OS&H regulations
  - Professional education and manpower development
  - Health Hazard Evaluations

The OSHA Law

- OSHA functions
  - Establish OSH regulations
  - Enforce compliance
  - Provide worker education
  - Encourage state programs
The OSHA Law

- General Duty Clause, or Section § 5(A)(1)
  - Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees

What are ‘recognized hazards’?
- Common knowledge or generally known in a particular industry
- Readily detectable by the senses
- Widely known and easily detected by simple tests – employer should easily know about the hazard
The OSHA Law

- The General Duty Clause, § 5 (A) (2):
  - Each employer shall comply with occupational safety and health standards promulgated under the act.

The OSHA Law

- General Duty Clause, § 5 (A) (3):
  - The employee shall comply with occupational safety and health standards and all rules, regulations and orders issued pursuant to this act which are applicable to his own actions and conduct.
The OSHA Law

- OSH Regulations (standards)
- Definition
  - A standard requires conditions, or adoption of work practices to provide safe and healthful employment.

The OSHA Law

- Origins of regulations
- § 6 (A) Temporary standards
  - Within two years of effective date of law
  - Promulgate as OSHA regulation (standard)
    - Any national consensus standard
    - Proprietary standards
    - Pre existing Federal standards
The OSH Law

- § 6 (A) Temporary standards – sources
  - Consensus
    - NFPA
    - ANSI
  - Proprietary
    - Underwriters Laboratories – UL
    - Factory Mutual – FM
    - American Society of Mechanical Engineers – ASME
    - American Conference of Governmental Industrial Hygienists (ACGIH)
    - Many more sources – see text book

The OSHA Law

- § 6 (B) Permanent Standards
  - Specific protocol must be followed
  - Administrative Procedures Act must be followed
The OSHA Law

§ 6 (B) (5) New Standards

- …shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.
- …other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.

The OSH Law

- Develop new standard or regulation
  - Indication of need
  - Request for additional information (ANPR)
  - Review all information
  - Develop proposed standard
  - Review feasibility
  - Publish notice – NPR (Notice of Proposed Rulemaking)
The OSH Law

- Develop new standard or regulation
  - Public comment period at least 30 days
  - Public hearings scheduled upon request (likely)
  - Review these comments
  - Revise standard as needed, based on evidence in docket
  - Publish final rule (promulgate rule)

The OSH Law

- Develop new standards – Judicial Review
  - Legal battles common, especially early in OSHA’s history
    - Fifth Circuit Court vs Second Circuit Court
  - Requirements to set new rules changed over years, based on Supreme Court decisions
The OSH Law

- **Carcinogens** (1974) regulation included chemicals known to cause cancer in animals, but not humans. OSHA may use information ‘on the frontiers of scientific knowledge’
- **Asbestos** (1972) did not protect against cancer, only asbestosis. OSHA may consider economic factors in setting standards
- **Vinyl chloride** (1974) PEL of 1 ppm, the limit of detection. OSHA used a policy of no threshold of exposure to a carcinogen, and rule was ‘technology forcing’

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The OSH Law

- **Lead** (1978) includes Medical Removal Protection, to supplement the PEL.
- **Benzene** (1978) OSHA did not conduct risk assessment (based on vinyl chloride decision). Supreme Court held that OSHA must demonstrate that a significant hazard exists, and that the new rule will reduce the hazard.
- **Cotton Dust** (1978) OSHA may not conduct cost-benefit analysis in developing new standards.
The OSH Law

Types of standards
- Performance Standards require an outcome
- Design Standards require an action, such as adequate ventilation
- Vertical Standards apply to a particular industry or operation
- Horizontal Standards apply across industry or operation

Occupational Exposure Limits
- Maximum exposure concentrations, to ensure health. Exposure should be kept below these values.
- OSHA Permissible Exposure Limits (PEL) are mandatory limits, others are guidelines.
- ACGIH Threshold Limit Values (TLV)
- NIOSH Recommended Exposure Limit (REL)
- AIHA Workplace Employee Exposure Limit (WEEL)
- ANSI, Germany, other sources
The OSH Law

- OSHA PELs
  - Most were § 6(A) standards based on consensus proprietary guidelines:
    - 29 CFR 1910.1000
      - Table Z-1 (1968 TLV list)
      - Table Z-2 (ANSI list)
      - Table Z-3 (ACGIH mineral dust)
  - Not many have been updated, partly because it is difficult to follow § 6(B) process
  - List [here](#)

- OELs have limitations
  - Not a community index (i.e. children)
  - Assume 8 hour day, 40 hour week
    - Adjust for other work patterns
  - Not a proof of hazard
  - May not be appropriate for all work conditions
The OSH Law

- **Action Level**
  - Added to new health standards § 6(B).
  - An exposure concentration chosen sufficiently below the exposure limit so that a random exposure measurement falling below this concentration indicates to a high level of confidence that a large proportion of all exposures are below occupational exposure limit.

- **Action Level**
  - Often ½ the PEL
  - Substance specific standards
  - Mandate specific actions such as signs, communication, exposure monitoring, medical monitoring
The OSH Law

- Hazard Communication (1983)
  - Affects everyone using chemicals in the workplace
  - Chemical manufacturers must determine the physical and health hazards of their products. They must communicate these using labels on containers and Material Safety Data Sheets (MSDS).

The OSH Law

- Hazard Communication Standard
  - Written hazard communication program
    - Tell employees about the HAZCOM standard
    - Explain how it works in their workplace
    - Provide information and training on hazardous chemicals
    - Teach how to interpret MSDSs
    - Provide MSDSs
    - Teach how to handle chemicals safely
The OSH Law

- OSHA Inspections
  - Warrant (Barlow decision)
  - Initiated by
    - Complaint
    - Accident
    - General inspection
  - Partial or complete
  - Health and/or safety

The OSH Law

- OSHA Inspections – what occurs
  - Present credentials
  - Explain reason for visit
  - Involve union, if present
  - Inspect workplace
  - Write citation if violations present
  - Employers may contest within 15 days
The OSH Law

- OSHA Penalties
  - Other than serious – optional up to $7000
  - Serious – mandatory – up to $7000
  - Willful – mandatory – between $5000 and $70,000
  - Repeat – mandatory up to $70,000
  - Failure to abate – mandatory up to $7,000 per day

The OSH Law

- State Plan States
- The OSH Act allowed states to operate OSHA program that are ‘at least as effective as’ Federal program.
- State Plans in: California and 22 other states and territories.
- State plan states protect local and state workers
California’s OSHA

- Law: Labor Code
- Regulations: CCR
  - California Code of Regulations
- Title 8
- Federal Level
  - Federal OSHA LAW
  - Regulations in Code of Federal Regulations
  - Chapter 29 is Labor
  - Chapter 40 is EPA
Arrangement CalOSHA Regulations

- §3203 (Section)
- (a) (Paragraph)
- (1) (Subparagraph)
- (A) (Item)

The Big Picture

- Divisions
- Subdivisions
- Chapters
- Subchapters
- Groups
- Articles
- Then it Goes to the Sections
Be Careful!

- Beware of “Exceptions”
- “Notes” Are Just Advisories
- ‘Should’s vs. ‘Shall’s
- ‘And’s vs. ‘Or’s
- Definitions

Scope and Application

- Scope, Purpose, Application, General
- Appear at Beginnings of Subchapters, Groups, Articles, etc.
- Define Under What Circumstances Those Regulations Apply.
§ 3203 Injury and Illness Prevention Program

- Employers must have a written and implemented safety program.

- Responsible Person, Employee Compliance, Meetings, Hazard Identification, Investigate Accidents, Hazard Correction, Training.

§ 3380 to § 3389

- Personal Protective Equipment.
- Helmets
- Goggles
- Hand Protection
- Foot Protection
Industrial Hygiene

- Starts With Group 14 (§ 5075)
- Non-Ionizing Radiation (§ 5085)
  - 29 CFR 1910.97
- Noise § 5095 to § 5100
  - 29 CFR 1910.95

Industrial Hygiene

- § 5110  Ergonomics
  - No Federal rule
- § 5139 to § 5155  Airborne Contaminants
  - 29 CFR 1910.1000
- § 5156 to § 5159  Confined Spaces
  - 29 CFR 1910.146
Industrial Hygiene

- § 5162  Emergency Eyewash and Shower.
- § 5163 to § 5192  Chemical Storage, Hazardous Substances, Emergency Spills.
- § 5193  Bloodborne Pathogens.
  - 29 CFR 1910.1030
- § 5194  Hazard Communication.
  - 29 CFR 1910.1200

Industrial Hygiene

- § 5198  to § 5220
  - 29 CFR 1910.1001 -1052

  - Substance-Specific Standards.

  - Includes Lead, Asbestos, Cadmium, Carcinogens.
The OSH Law

- California OSHA
- Web page: [http://www.dir.ca.gov/DOSH/dosh1.html](http://www.dir.ca.gov/DOSH/dosh1.html)
- Pamphlet describing [CalOSHA](http://www.dir.ca.gov/dosh/dosh_publications/osha_userguide.pdf) here.