

OSHA Means Business

'New' OSHA has upped the ante on enforcement; more may be on the way—are you ready?

By Jim Stanley

When the Obama administration announced two years ago that there was a “new sheriff in town” for workplace safety, it wasn’t kidding. OSHA enforcement has ramped up dramatically.

But how aggressively that trend will continue is now open to question with two new factors in the mix:

A Republican majority in the House of Representatives and an announcement by President Barack Obama that his administration will review regulations to make sure that they aren’t excessive and don’t hamper business growth.

The list of current and planned enforcement initiatives is long. Here are the top items that could impact the textile services industry.

- **Ergonomics**—Enforcement is up. OSHA doesn’t have an ergonomic standard, however it’s using its “general duty” clause to cite employers for ergonomic issues.
- **Training**—OSHA is tightening standards aimed at making sure that workers who speak other languages understand safety training.
- **Penalties**—OSHA has significantly increased the number of “megafines” it’s issuing in what it calls “egregious cases.” Fines for all other citations are up significantly as well.
- **Severe violators**—A new program has been created to crack down on companies OSHA identifies as severe violators.
- **Recordkeeping**—OSHA has created a program to step up enforcement.
- **Prevention**—OSHA is proposing to create an Injury and Illness Prevention Program that would require all employers to implement a safety program following specific federal guidelines.

OSHA did announce in January that it was backtracking on two

initiatives. One was a proposed interpretation of noise standards that could have forced many employers to retrofit their plants using engineering controls to reduce noise levels.

The other was a proposal to require employers to note ergonomic injuries in a separate column on the OSHA-mandated injury and illness log.

Below is more detail on those initiatives. Additional information on them also is available in the archives of my blog on www.fdrsafety.com.



Ergonomics

OSHA said in January that it planned to add a separate column for reporting musculoskeletal disorders (also known as ergonomic injuries) on the OSHA 300 log next year. But later in the month, it withdrew its proposal for more study, citing concerns by small business.

OSHA’s leader, Dr. David Michaels, did say last spring that the agency would step up enforcement on ergonomics, and it has been doing so. The Solicitors Office of the U.S. Department of Labor has also said it’s planning to work with OSHA on an “Ergonomic Response Team” to identify cases and develop legal theories to address ergonomic hazards.

Training

Last year, OSHA began to instruct its inspectors to issue “serious” citations if a “reasonable person” would conclude that employees had received safety training in a format that they are “capable of understanding.”

Rod Smith, Pat Miller and Matt Morrison of the Sherman and Howard law firm have pointed out potential problems with this order:

“Allowing inspectors to issue a citation based on the views of a hypothetical ‘reasonable person’ is an extremely ambiguous standard, and an invitation to arbitrary enforcement. Although many safety professionals understand the need to translate training materi-

Compliance

als into appropriate foreign languages, OSHA does not provide any guidance on how employers can present training in a manner which all employees are 'capable of understanding,' so as to avoid a citation.

"So, what should employers do to avoid a citation and ensure that their employees understand the safety training that they receive? Providing complex, written materials to employees with a sign-off sheet indicating that the employee 'has read and understood' the training material is not enough, especially if the employee cannot read or comprehend the rules.

"A better approach, as recommended by OSHA, is for employers to realize 'that if they customarily need to communicate work instructions, or other workplace information to employees at a certain vocabulary level, or in a language other than English, they will also need to provide safety and health training to employees in the same manner.'"

Penalties

OSHA has increased the number of large-penalty citations, as well as increasing the average size of penalties in smaller cases.

From October 2009 to September 2010, OSHA issued citations in 164 cases where penalties reached \$100,000 or more.

Of those cases, there were 20 in which OSHA deployed its egregious citation policy. Egregious citations are those considered so serious that OSHA assesses penalties for every instance where a violation occurs, rather than grouping all the instances into one penalty, as is done in non-egregious cases. The result of separate penalties can be so-called "megafines" that are intended as a deterrent.

"This number of significant and egregious cases is more than OSHA issued during any similar period in the last decade," OSHA said.

In addition, OSHA made a number of changes in its policies on administering penalties, which it said would increase the average penalty per violation from \$1,000 to an average of \$3,000-\$4,000.

Severe violators

OSHA last year created a Severe Violators Enforcement Program. The program focuses on employers that have demonstrated an "indifference" to workplace safety obligations through willful, repeated or failure-to-abate violations in four areas:

1. Fatality or catastrophe situations
2. Industries that expose employees to the most severe hazards
3. Industries that expose employees to the potential release of highly hazardous chemicals
4. Egregious enforcement actions

If OSHA selects an employer for inclusion in the program, it may be subject to enhanced penalties imposed in every instance where a

violation occurs, rather than grouping all the instances into one penalty, as is normally done.

In addition, if the employer has more than one work site, those other sites may be subject to inspections looking for the same problems.

Although the Severe Violators program may apply to smaller employers with several locations, its biggest impact will be on large employers with multiple sites.

Recordkeeping

In 2009, OSHA announced that it was launching a National Emphasis Program to determine the accuracy of recordkeeping on accidents and illnesses by employers in selected industries.

The program was refocused last year to target manufacturers, but the basic approach remains the same. OSHA is concerned not only about employers with high accident rates, but also those whose rates are significantly below the industry average. OSHA's thinking is that a low rate may signal that an employer isn't fully reporting all incidents.

Proper recordkeeping ought to be on the minds of all employers. These violations are often "low-hanging fruit" for OSHA inspectors.

Prevention

OSHA has proposed requiring every company in its jurisdiction to have a safety and health program that follows what will likely be rather detailed specifications. This initiative is called the Injury and Illness Prevention Program, or I2P2.

In my view, while it's a good idea to require a safety program that follows broad guidelines, businesses vary so much in their operations that it's unrealistic to think that federal specifications will serve the cause of health and safety. Companies need the flexibility to build programs that match their own circumstances.

Noise

Since 1983, OSHA in most cases hasn't cited employers who used personal protective equipment and a hearing-conservation program to address noise, rather than engineering and administrative controls.

Last fall, in a proposal **now withdrawn**, OSHA proposed to interpret noise standards as written. Those standards say that noise exceeding specified levels would be addressed by "feasible" administrative or engineering controls.

The agency had proposed that administrative or engineering controls would be considered economically feasible, "if they will not threaten the employer's ability to remain in business, or if the threat to viability results from the employer's having failed to keep up with industry safety and health standards."

This proposal could have resulted in requirements that plant owners retrofit equipment with such items as sound enclosures.

OSHA withdrew the proposal in January, saying the issue of

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workplace noise needed further study.

What's next

At press time, the extent of the administration's regulatory review and its impact on OSHA was unclear. The regulatory review appears to have come in response to complaints from business that excessive regulations are hampering growth. Some of those complaints have been directed specifically at OSHA.

Likewise, the fallout from the election of a Republican majority in the House was unclear, although the new House GOP leaders have also identified excessive regulation as a major concern.

How to respond

No matter what happens, the most important step a laundry operator can take to meet the enforcement challenge is to create a safety program that identifies the principal hazards in a plant and develops a plan to address them.

The most common problems OSHA finds at laundry plants center on five issues:

- Permit-required confined space entry—OSHA has detailed rules on entry into confined spaces by workers in textile services.
- Machine guarding—OSHA requires employers to guard against hazards created by moving parts.

- Lockout/tagout—Laundry workers must be protected from unanticipated energization of machinery, while this equipment is undergoing service or maintenance.

- Electrical hazards

- Recordkeeping—Laundries sometimes don't have adequate procedures in place to record accidents in the way OSHA requires.

Laundry executives may find it helpful to conduct a mock OSHA inspection of their plants to identify potential trouble spots—or have a consultant perform that duty for them.

Once hazards are identified, a written plan should be developed to address them. Top management must be completely committed to supporting the plan, and middle management and workers should be fully educated on how to carry out the plan. **TR**



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